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DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

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Argeo Paul Cellucci, Governor
Jane Wallis Gumble, Director

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MEMORANDUM

TO: All Local Housing Authorities

FROM: Carole E. Collins, Director, Bureau of Asset Management

RE: Final Revised Regulations Effective October 1, 1998

DATE: June 8, 1998

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In accordance with Executive Order 384, To Reduce Unnecessary Regulatory Burden, the Department of Housing and Community Development (DHCD) has undertaken a review of the Department's public housing regulations. As a result of the review, DHCD held two public hearings in the last 18 months on proposed changes to the regulations listed below. In recognition of the many thoughtful comments the Department received from Local Housing Authorities (LHAs), Local Tenant Organizations (LTOs), and others, the Department has made a number of changes to public housing regulations currently in effect. What follows below is a general overview of what the new regulations will do.

Effective October 1, 1998, DHCD will repeal the following:

760 CMR 28.00	**Regulations to Local Housing Authorities Governing Collective Bargaining**
760 CMR 32.00	**Standards of Conduct for Public Officials and Employees of Housing and Redevelopment Authorities**
760 CMR 33:00	**Affirmative Action Governing Local Housing Authorities**

and adopt a new regulation containing provisions that were part of the above listed regulations in the following:

760 CMR 4.00	**General Administration of Local Housing Authorities**

100 Cambridge Street
Boston, Massachusetts 02202-0044

In addition, effective October 1, 1998 DHCD will repeal the following:

760 CMR 1.00	**Pet Ownership in c.667 Elderly/Handicapped Housing**
760 CMR 2.00	**Lease Provisions for State-Aided Public Housing**
760 CMR 3.00	**Tenant Grievance Procedures**
760 CMR 6.00	**Tenant Participation in the Administration of Public Housing**
760 CMR 7.00	**Determination of Rents in State-Aided Public Housing**

and adopt a new regulation containing provisions that which were part of the above listed regulations in the following:

760 CMR 6.00	**Occupancy Standards and Tenant Participation for State Aided Housing**

All existing regulations listed above will remain in effect until the new regulations take effect October 1, 1998. However, certain waivers, agreements, arrangements and documents will remain in effect. Waivers given pursuant to the former regulations, in effect at an LHA immediately prior to the October 1 effective date, shall remain in effect unless and until revoked by the Department. Leases and grievance procedures in use immediately prior to the effective date shall remain in use until new or amended leases and grievance procedures are approved by the Department. Recognition of local tenant organizations in effect on the effective date shall remain in effect. Tenant participation agreements in effect on the effective date remain in effect according to their terms unless amended or revoked.

Certain changes to how public housing tenant rents are calculated are contained in the new 760 CMR 6.00. Notice of any rent changes pursuant to the new regulation must be given in accordance with the provisions of the lease in effect at the time of the change. LHAs are encouraged to consult with their asset management specialists or, where applicable, legal pilot attorneys regarding questions. Asset Management is working with the pilot attorneys to set up training sessions regarding the new regulations in the near future. You will receive notice of those sessions under separate cover at a later date.

A brief overview of certain changes which have been made to the current regulations is attached. This summary is solely for convenience and should not be used as a substitute for the regulation.

We request that you provide each local tenant organization with a copy of this memo and the enclosures. Thank you for this assistance.

Overview of new 760 CMR 4.00 - Consolidation of 760 CMR 28.00, 32.00 & 33.00

760 CMR 4.00 contains provisions replacing provisions in the existing code of conduct regulation (760 CMR 32.00), the collective bargaining regulation (760 CMR 28.00) and the affirmative action regulation (760 CMR 33.00). It contains a section on funding LHA employee positions. The new regulation reflects numbering changes made to the Massachusetts Rental Voucher Program Regulation (changed to 760 CMR 15.00 from 760 CMR 49.00) and the Alternative Housing Voucher Program regulation (changed to 760 CMR 16.00 from 760 CMR 53.00).

Code of Conduct

The new code of conduct section in 760 CMR 4.04 applies only to LHAs. The regulation currently in effect applies to both LHAs and Local Redevelopment Authorities (LRAs). The section deals with the applicability of MGL c. 268A to LHAs. This section provides general guidance and encourages LHAs and individuals to consult the Ethics Commission for evaluation of specific conduct. The regulation also prohibits certain conduct as a matter of Department policy.

Funding of Employees

The section (4.05) regarding funding of LHA employee positions provides that the Department will approve salaries and wages in an LHA's budget as long as the LHA has followed all applicable hiring procedures and the employee meets the minimum qualifications for the position. Criminal Offender Record Information (CORI) for new employees is required and the use of CORI in the screening of employees is explained. Executive director hirings will continue to be addressed through guidelines in order to maintain a proper degree of flexibility regarding requirements for these positions. The new regulation clarifies that the Department has the authority and responsibility to ensure that standards for these positions are followed by LHAs.

Affirmative Action and Fair Marketing

The affirmative action sections of the regulation (4.06 through 4.09) reflect the Department's commitment to equal opportunity and to such affirmative action necessary to ensure equal opportunity. The new regulation continues to provide guidance to LHAs so that they will provide equal opportunities in all areas of operation. It codifies the Department's existing practice of collecting housing demographic data every two years in order to ensure that any problems will be identified and remedied.

Collective Bargaining

The collective bargaining section of the regulation (4.11) is much the same as the current regulation. However, it eliminates the current requirements that LHAs notify the Department before recognizing a bargaining unit and that there be a pre-execution conference with the Department. There is a provision for a pre-bargaining conference, where funding limitations will be discussed. The new regulation specifies that LHAs that negotiate terms carrying excessive costs may not receive state funding for those costs.

Overview of new 760 CMR 6.00 - Consolidation of 760 CMR 1.00, 2.00, 3.00, 6.00 & 7.00

The Occupancy Standards and Tenant Participation for State-Aided Housing regulation (760 CMR 6.00) replaces the existing pet, lease, grievance, tenant participation and rent regulations (760 CMR 1.00, 2.00, 3.00, 6.00 and 7.00). The new regulation reflects numbering changes made to the Massachusetts Rental Voucher Program Regulation (to be changed to 760 CMR 15.00) and the Alternative Housing Voucher Program regulation (to be changed to 760 CMR 16.00).

Rents

The rent section (6.05) of the new regulation continues to define income, exclusions, and deductions in much the same way as the current regulation. The new regulation allows LHAs to use income information from the prior calendar year to help determine current income. Tenants will be required to report income changes at the point that they receive a 10% increase in monthly gross income (the existing regulation requires that all changes in income be reported within 7 days). Retroactive lump sum income payments will be treated as the one time events that they are. Tenants will be required to report all such payments and LHAs will calculate the appropriate percentage (25% or 30%) of the income received for a period when the tenant was living in a state-aided unit. Interim rent changes will be based on the remainder of the rent year. These changes should enable LHAs to more easily determine that the tenant reported income is accurate when compared to the DOR wage and bank match for the same period.

Leases

The lease section (6.06) of the proposed regulation requires that each tenant and LHA execute a lease that has been approved by the Department. The section lists a number of required lease terms but does not dictate the precise language for the lease. In comparison, the existing regulation sets out a model lease. Under the new regulation, leases may vary at an LHA by program. This will allow LHAs to accommodate the different circumstances which may exist in family and elderly developments, for example. LHAs must consult with their LTOs in developing a new or amended lease.

Pets

As at present, pets are allowed in c. 667 housing. Section 6.07 of the new regulation streamlines the process for appealing LHA denials of permission to own pets. LHAs must directly furnish a list to the tenant of the information necessary for an appeal, a change from the current procedure where a tenant must first request a waiver from the Department which then sends the tenant a letter listing the information which will be required for Department consideration of the waiver.

Grievances

The new provisions regarding grievances in section 6.08 allow LHAs and LTOs to design their own procedures as long as they meet certain minimum standards. In the absence of agreement on a workable procedure, the regulation provides for a procedure utilizing a 3 person hearing panel, unless such a panel is likely to be unworkable, in which case a procedure utilizing a single hearing officer would be used. The time frame for grievance hearings has been shortened. There is a provision for certain appeals to the LHA board and DHCD. Reviewable grievances do not include cases where the grievance concerns whether

good cause exists for terminating a lease where the grievance decision (if required) is not appealable. The grievance panel decisions that may be reviewed include cases where the LHA or the grievant believes that: the decision is not supported by the facts; the decision does not correctly apply applicable law, regulations, etc.; or the subject matter is not grievable. Grievance hearings are not required in cases involving termination of tenancy for non-payment of rent or where the LHA has reason to believe that tenant, household member, or guest has:

- Unlawfully caused serious physical harm to another tenant or an employee of the LHA or any other person lawfully on the LHA's property.
- Threatened to cause such harm to such a person.
- Destroyed, vandalized or stolen property of such a person, if such conduct creates or maintains a serious threat to the health or safety of such a person.
- Unlawfully possessed, carried, or kept a weapon on or adjacent to the LHA's property.
- Unlawfully possessed or used an explosive or incendiary device on or adjacent to the LHA's property.
- Unlawfully possessed, sold, or possessed with intent to distribute a class A, B or C controlled substance, on or adjacent to the LHA 's property.
- Engaged in other criminal conduct which seriously threatened or endangered the health or safety of such a person.
- Engaged in behavior which would be cause for voiding the lease pursuant to the provisions of M.G.L. c. 139, §19.

Tenant Participation

The tenant participation section of the new regulation (6.09) enables LHAs and LTOs to negotiate the specifics of tenant participation appropriate for local circumstances. Certain standards of participation are required in the absence of such an agreement. Provisions are made for the process of recognition of an LTO and for Department determination where disputes arise and where withdrawal of recognition is sought. The new regulation also allows some flexibility on the amount of funds LTOs receive from LHAs. The existing regulation sets an amount of $3 per unit per year or a minimum of $250 per year. The new regulation permits the Department to authorize budgets at a rate up to $6 per unit. The $250 minimum remains.

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Argeo Paul Cellucci, Governor
Jane Wallis Gumble, Director

760 CMR 4.00

GENERAL ADMINISTRATION OF LOCAL HOUSING AUTHORITIES

EFFECTIVE OCTOBER 1, 1998

100 Cambridge Street
Boston, Massachusetts 02202-0044

760 CMR 4.00: GENERAL ADMINISTRATION OF LOCAL HOUSING AUTHORITIES

Section

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4.12: Waiver of Provisions by the Department

4.01: Effective Date

760 CMR 4.00 became effective on October 1, 1998. Its provisions superseded provisions in 760 CMR 28.00, 32.00, and 33.00 as previously promulgated, which were rescinded on that date.

4.02: Definitions

Definitions in 760 CMR 5.00 and 760 CMR 6.00 shall apply in 760 CMR 4.00. The following definitions shall also apply:

Administrative or supervisory employee - an LHA employee who has administrative or supervisory authority over others; an administrative or supervisory employee includes, but is not limited to, the following: executive director, assistant executive director, general counsel, maintenance supervisor, department head, tenant selector, and project manager.

Immediate family - a person, his or her spouse and his, her, or their parents, grandparents, children, grandchildren, brothers, and sisters, including in-laws.

Minority Business Enterprise (MBE) - a business organization owned and controlled 51% or more by one or more minority persons as defined by the State Office of Affirmative Action and certified as such by the State Office of Minority and Women Business Assistance (SOMWBA).

Vietnam Era Veteran (VEV) - a Vietnam Era Veteran as defined by the State Office of Affirmative Action.

Women Business Enterprise (WBE) - a business organization owned and controlled 51% or more by one or more women and certified as such by the State Office of Minority and Women Business Assistance (SOMWBA).

4.03: General Requirements

(1) Each LHA shall administer its operations in a fair, accessible and even-handed manner. Such administration shall include but not be limited to;

(a) keeping and posting office hours in accordance with the Department's guidelines so that tenants, applicants, local and state officials and the general public have a reasonably convenient ability to communicate with the LHA and to take steps necessary to access the LHA's programs and opportunities.
(b) properly maintaining its property within budget.
(c) using administrative and financial procedures and policies prescribed in the Department's guidelines.
(d) posting in a conspicuous place in the LHA's central office, a notice stating that any individual who believes he or she has been denied employment or housing, discharged, or has suffered discrimination in compensation or in the terms, conditions, or privileges of employment or housing on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs, has the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD).
(e) adopting and enforcing appropriate anti-discrimination policies, which meet the requirements of applicable law, including, a policy against sexual and other discriminatory harassment and a policy for reasonable accommodation on account of disability.
(f) giving to an applicant or tenant, who is known not to speak English, information in commonly spoken foreign languages of the importance that any notice requiring a response or action be translated.

(2) The LHA shall post and shall keep posted in a conspicuous place in its central office and, if practical, in each development, all rules and policies of the LHA and the regulations of the Department which affect the rights, status, duties or welfare of tenants and their households. If postings are repeatedly removed, destroyed or defaced, the LHA shall take reasonable alternative measures to make the material conveniently available to tenants. Absence of a posting shall not affect the validity or applicability of rules, policies or regulations. Upon request, a tenant shall, without charge, be provided with one copy of an applicable rule, policy or regulation; the LHA may charge a reasonable fee for providing a duplicate copy or copies to the tenant.

(3) From time to time the Department may develop and issue guidelines and/or standard forms to be used by the LHA in connection with the provisions of 760 CMR 4.00, 5.00, 6.00, 8.00, 11.00, 15.00 and 16.00 and with reports required by the Department. Each LHA shall employ the current guidelines and the current forms.

4.04: Code of Conduct

(1) Standards in M.G.L. c. 268A

(a) Applicability to LHA. M.G.L. c. 268A specifies standards of conduct for all Massachusetts public officials and employees. Board members, employees, and professional consultants employed by LHAs are considered to be public officials or employees subject to these standards.

(b) Prohibitions. M.G.L. c. 268A prohibits improper conduct by public officials and employees. The statute also prohibits conduct which appears to be improper. An LHA board member or employee cannot have a financial interest in contracts with the LHA. An LHA board member or employee cannot accept gifts to influence a decision, and he or she cannot accept compensation, other than that paid by the LHA, in connection with any matter in which the LHA has an interest. The statute contains other standards of conduct that apply to board members and employees. When questions arise as to whether certain conduct may be improper under the statute, the affected person should consult the State Ethics Commission.

(2) Specific Standards Affecting Board Members and Employees. The following specific restrictions shall apply to LHA board members and employees:

(a) Ineligibility of Certain officials to be State-Appointed Board Members. An elected or appointed official of a state, county or municipal government, other than a town meeting member, who is in a policy making position as determined by the Department, shall not be eligible for appointment as the state-appointed board member of an LHA. This restriction shall not prohibit reappointment of a currently serving state-appointed board member.

(b) Ineligibility of LHA Board Members for Employment. An LHA board member shall not be eligible for any paid position, including temporary or contract work, with the LHA during his or her service as a board member or for a period of one year following the end of such service.

(c) Ineligibility of Certain LHA Employees for Employment as Clerk of the Works. An LHA executive director, assistant executive director, or director of maintenance or modernization shall not be eligible to serve as clerk of the works on any development or modernization project of the LHA for a period of one year following termination of his or her employment with the LHA.

(d) Ineligibility of Family Members for Employment. No member of the immediate family of an LHA board member or of an administrative or supervisory employee shall be eligible for employment in any capacity at the LHA without the prior written approval of the Department. The Department may in its discretion approve employment of such immediate family member provided that there has been compliance with all pertinent hiring standards and procedures, the individual is qualified for the position, and the appointment has not been influenced by any consideration other than merit.

(e) Restrictions on Supervision by Family Members. No LHA employee shall hold a position in which he or she directly or indirectly would supervise a member of his or her immediate family.

(f) Restrictions on Purchases of Goods or Services. No LHA shall contract with or purchase goods or services from an LHA board member, employee, or member of the immediate family of such board member or employee, or from any closely held entity in which an LHA board member, an employee, or a member of the immediate family of such board member or employee holds any capital stock or has any beneficial interest.

(g) Admission or Transfer of an LHA Board Member, Employee, or Family Member as a Tenant. Whenever any LHA board member, any administrative or supervisory employee or any

member of the immediate family of such a board member or employee seeks admission as a tenant or seeks admission as a participant in a program administered by the LHA or seeks a transfer to a different unit, all necessary information shall be forwarded to the Department, which shall make the decision on the requested admission or transfer in accordance with applicable procedures.

(h) Restrictions on Rental Assistance to LHA Board Members, Employees, and Family Members. No rental assistance shall be paid for any unit owned in whole or in part by an LHA board member, executive director, rental assistance director, any other employee of an LHA (if such person is an employee in the same municipality as the unit), or a member of any such person's immediate family under any state-funded rental assistance program without the prior written opinion of the State Ethics Commission that such payment would not be improper. The LHA shall forward a copy of the opinion to the Department.

(i) Prevention of Personal Use of LHA Property. No LHA board member or employee shall make personal use of or permit any other person to make personal use of any property belonging to the LHA. The property belonging to the LHA shall be used in furtherance of the LHA's purposes. This provision shall not be construed to limit the LHA from allowing LTOs, non-profit neighborhood or community groups, or public service organizations to use the property of the LHA for proper purposes benefitting the LHA or its tenants.

(j) Restrictions on Gifts or Compensation. No LHA board member or employee or any member of his or her immediate family (whether on his or her own behalf or on behalf of another person or entity) shall request, solicit, receive, or accept any cash, gift or compensation in any amount from any LHA tenant or any person or other entity who or which does or may reasonably be expected to do business with the LHA. No LHA employee may receive compensation (other than from the LHA) for goods or services provided to a tenant whether or not such goods or services are provided during working hours or on LHA property.

(k) Restrictions on Political Activity. In addition to any restrictions on political activity imposed by federal law, no LHA board member or employee shall solicit or receive campaign contributions, or conduct political activities during work hours, on LHA property or by use of LHA resources, or shall improperly use his or her official position to coerce or influence others in political campaigns.

(l) Preferential Treatment on Account of Board Membership. No family member, friend, business associate, employer, or potential employer or any like person shall be given any preferential treatment by the LHA because of his or her relationship with the board member. A tenant, who is a board member, shall receive no preferential treatment in housing or services because of his or her board membership.

(m) Limitations on a Board Member Who is an Officer of an LTO. A board member who is an officer in a local tenants' organization (LTO) (or other local tenants' association) shall not act on behalf of the LTO (or other tenants' association) before the LHA. An officer of an LTO (or tenants' association) who is a board member shall not contact the LHA or appear at any LHA meeting on behalf of the LTO (or other such association), and he or she shall not participate as a board member in any matter directly involving the LTO (or other tenants' association) in which he or she is an officer. No LTO (or other tenants' association) shall be given preferential treatment because an officer of the organization is a board member or a member of the family of a board member.

(3) Waiver of Restriction for Good Cause. The Department may in its discretion waive one or more of the restrictions in 760 CMR 4.04 (2) in a particular situation where there is a good cause for the waiver and the conduct is not otherwise prohibited.

(4) Tenant Board Members. The following restrictions shall apply to tenants who are board members of an LHA:

(a) Laws Restricting Certain Actions. In recognition of the value of a tenant on the board of an LHA, M.G.L. c. 121B §5 requires that one of the four locally appointed board members in a city must be a tenant in the LHA's housing. The only restriction imposed by the Legislature in M.G.L. c. 121B on participation by a tenant board member in the LHA's business is that he or she may not participate in any decision which affects his or her "personal interest".

The board members of an LHA are considered special municipal employees. The Commonwealth's Ethics Law, in M.G.L. c. 268A §19 prohibits a special municipal employee from participating in his or her job capacity in any matter in which the employee (or a family member, a business in which he or she holds an office or is employed, or a potential employer with which he or she is negotiating) has a "financial interest".

Thus, a tenant board member under the Ethics Law must avoid participating in decisions which affect his or her "financial interest" (the Ethics Commission requires such an interest either to be "direct" or "reasonably foreseeable") and under c. 121B must avoid participating in decisions which affect his "personal interest". These two statutory requirements should be construed in harmony with each other in determining whether a tenant board member may participate in making a decision. The Ethics Law should not be read to prevent full and effective participation of a tenant member on an LHA board so long as he or she does not use his or her position to derive some direct personal benefit, financial or otherwise, to the board member (or to a family member or to a business or potential employer described above).

(b) Determination of When Not to Participate. The determination (whether a decision would have a direct or other reasonably foreseeable effect on a personal interest) is one which the tenant board member must make initially. He or she should look to see whether the decision would result in some actual benefit to himself or herself (or a family member or a business or potential employer described above). A benefit is something of more than minimal value which the board member (or family member or business or potential employer described above) might receive depending on the board's vote. In the event that a vote could result in such a benefit to the board member (or family member or business or potential employer described above), he or she should not participate in making the decision, unless the matter is one of general application to all tenants in a housing program.

The question, whether a decision could be considered to have such a direct benefit, may be difficult for a board member to make under certain circumstances. In such a case the member should request advice from the Ethics Commission, which has established procedures for giving both formal and informal advice.

(c) Examples of When a Tenant Board Member May or May Not Participate. A tenant board member shall not participate in discussions or votes regarding any matters which will affect his or her tenancy or housing unit exclusively, or which will benefit a number of tenancies or housing units, including the tenant member's unit, but exclude other similar tenancies or housing units. For example, a tenant member may not participate in a discussion or vote to provide new appliances to a number of selected units, including the member's own unit and excluding other units which also need new appliances. A tenant member may participate in a discussion or vote on policy matters if they will apply to all tenants in the same housing program equally, such as lease provisions, rules and procedures, but should not participate in a discussion or vote on policy matters which will confer a benefit on himself or herself (or a family member or to a business or potential employer described above) to the exclusion of other potentially eligible tenants.

4.05: Funding of LHA Employee Positions

(1) In approving salaries and wages in an LHA's budget, the Department shall determine that all of the following conditions have been met:

(a) In selecting its employees the LHA has followed all applicable hiring procedures (in the case of the executive director, the Department 's "Executive Director Hiring Guidelines") which shall have been approved by the Department and has complied with the LHA's personnel policy and any other applicable legal requisites.

(b) Each employee meets the minimum qualifications for his or her position set forth in the LHA's job description and in the advertisement for the position.

(c) At the time of hire, Criminal Offender Record Information (CORI) discloses no dispositions of criminal matters reflecting the potential employee's dishonesty, untrustworthiness, unreliability or unsuitability to perform the duties of the position or reflecting activity, which if repeated by an employee, would endanger the safety or security of tenants, household members, employees, or guests or the security of their property or the property of the LHA.

(d) If the LHA and the executive director shall have negotiated an employment agreement to be funded in whole or in part by the Department, the Department shall have approved the agreement. The Department shall establish guidelines setting standards for approval of such employment agreements.

(2) In the event an LHA shall lack sufficient revenues to meet its expenditures in its operating budget(s) approved by the Department for state programs, the Department shall fund the deficit as provided by law. The total expenditures for salaries and wages shall not exceed the amount in the approved budget for salaries and wages without the approval of the Department.

4.06: Equal Opportunity Officer

Each LHA shall designate a highly placed official or employee as the Equal Opportunity Officer (EO Officer). LHAs shall forward the name of the individual so designated to the Department's Affirmative Action Officer and shall notify the Affirmative Action Officer when a new EO Officer is designated.

4.07: LHA Affirmative Action Plan

(1) Purpose. Nondiscrimination and equal opportunity are the policy of the Commonwealth. It is of critical importance for agencies of state and local government to take affirmative steps to prevent discrimination and to promote equality of opportunity in their operations. Where there has been discrimination, affirmative action shall include efforts necessary or appropriate to remedy the effects of such discrimination.

(2) Adoption of Plan. Each LHA shall be responsible for the development, implementation, monitoring and update of a written affirmative action plan. Each LHA shall submit to the Department a board vote that the affirmative action plan has been adopted by the LHA together with a copy of the plan. A similar vote shall be submitted for each change in the plan, along with a copy of the change. The plan shall be kept on file at the LHA and available for inspection by tenants, employees, and applicants for housing and employment. The Department may require changes or updates of the plan in the event that the plan shall be inadequate. The affirmative action plan of an LHA, adopted prior to and in effect on the effective date of this subsection, pursuant to 760 CMR 33.00 as previously in force, shall satisfy the requirement for development of a plan.

(3) Contents of Plan. The affirmative action plan shall include, but not necessarily be limited to, the following:

(a) A written equal opportunity policy.

(b) A workforce analysis, including:

(i) For each department or division of the LHA, the number of minorities (this number may be further broken down by minority group), the number of women, the number of persons with disabilities and the number of Vietnam Era Veterans (VEVs) in each of the following job categories and the total number of employees in each such job category:

a. maintenance and service;

b. clerical;

c. managerial, technical, and professional.

For purposes of 760 CMR 4.07 a person with a disability shall be deemed to be an individual who has a physical or mental impairment which substantially limits one or more of his or her major life activities.

(ii) The number of individuals hired in each such job category during the LHA's previous fiscal year; and the number of minorities (this number may be further broken down by minority group), the number of women, the number of persons with disabilities, and the number of VEVs hired in each such job category during the LHA's previous fiscal year.

(iii) A listing of recruitment sources used during the previous fiscal year.

(c) A determination of the percentages which minorities (the percentage of minorities may be further broken down by minority group), women, persons with disabilities, and VEVs have in the population of the municipality and the applicable (primary) metropolitan statistical area in which the municipality is located, as determined in the most recent federal census. The applicable percentages based on the most current census figures shall be provided to the LHA by the Department. The higher of the applicable percentages for minorities, women, persons with disabilities, and VEVs shall be the goals of the LHA for employment

in the LHA's work force. The goal for employment of minorities may be broken down into goals for employment of the distinct minority groups. Ideally, each job category will reflect percentages of minorities (or minority groups), females, persons with disabilities, and VEVs which are the same as the percentages in the overall population of the municipality or the (primary) metropolitan statistical area, whichever is applicable.

(d) A description of methods for publicizing job openings so as to encourage job applications by minorities (or members of underrepresented minority groups), women, persons with disabilities, and VEVs, including, but not necessarily limited to, the following:

(i) Publicizing internally and externally through usual means designed to reach a wide audience.

(ii) Utilizing media sources which will reach minorities, women, persons with disabilities, and VEVs as necessary.

(iii) Contacting organizations which serve minorities, women, persons with disabilities, and VEVs as necessary.

(iv) Causing all solicitations or advertisements for employees to state: "An Equal Opportunity Affirmative Action Employer."

If consistent with any applicable internal promotion policy, LHAs shall make efforts to keep job positions open for a reasonable amount of time in order to effectuate the efforts to encourage applications by minorities, women, persons with disabilities, and VEVs. At a minimum, no job position shall be filled until at least two weeks after the publicizing efforts have been taken.

(e) A requirement that, for every job opening not filled through internal promotion pursuant to an internal promotion policy, the LHA shall interview a minimum of three qualified candidates, if available, and that an effort shall be made to interview at least one candidate from an underrepresented group.

(f) A statement of measures ensuring against discriminatory practices in hiring, including review and, where necessary, development or revision of the following:

(i) recruitment and personnel procedures;

(ii) selection process, including matters such as job requirements, job descriptions, testing, interviewing, and application forms;

(iii) internal promotion policy or other policy on promotions;

(iv) terms and conditions of employment; and

(v) policies relating to layoff, recall, termination, demotion, discharge.

(g) Provisions for periodic review of the effectiveness of affirmative action efforts, including an annual update of the workforce analysis, the description of methods of publicizing job openings, and the statement of measures insuring against discriminatory practices.

(4) Reports to the Department. Within 90 days after the end of the LHA's fiscal year, each LHA shall supply the Department with its workforce analysis, its description of methods of publicizing job openings, and its statement of measures ensuring against discriminatory practices for the previous fiscal year. The Department may require an LHA to supply additional information. If at any time the Department shall find that an LHA has failed to comply with its affirmative action plan or has failed to make reasonably effective affirmative action efforts, the Department shall require the LHA to take appropriate corrective measures.

(5) Hiring Among Equally Qualified Persons. Until an LHA has reached its affirmative action goals, when it has a choice between candidates whom the LHA has determined to be equally qualified, if one or more are tenants, such tenant candidate(s) shall be deemed to be more qualified than the non-tenant candidates. If, notwithstanding the preference for tenants in hiring, there remain equally qualified candidates, the order of further consideration as to which candidate to hire shall be as follows:

(a) Where an LHA has not reached a goal for employment of minorities (or for employment of members of a particular minority group), qualified minority candidates (or qualified candidates from such minority group).

(b) Where an LHA has not reached a goal for employment of persons with disabilities, qualified candidates with disabilities.

(c) Where an LHA has not reached a goal for female employment, qualified female candidates.

(d) Where an LHA has not reached a goal for employment of VEVs, qualified VEV candidates.

(e) Where a candidate qualifies in more than one category, this fact shall entitle him or her to receive the LHA's further consideration before other candidates in the highest category for which he or she qualifies.

(6) Residency as a Criteria. Residency within the city or town in which an LHA is located is prohibited as a prerequisite for employment except a residency requirement is permitted in the case of 24 hour on-call maintenance personnel.

4.08: LHA Fair Marketing Plan

(1) When a Fair Marketing Plan is Necessary. All LHAs shall engage in and promote fair housing and tenant selection practices so as to prevent discrimination and to promote equal opportunity. The Department shall from time to time review an LHA's tenant selection policies or practices with respect to housing minority households. Each LHA shall biennially determine and report to the Department the percentages of minority households in the LHA's housing by program. The Department shall determine whether any percentage is significantly below the percentage of minorities in the general population of the city or town or in the general population of the applicable (primary) metropolitan statistical area, whichever is greater, and, if so, the Department shall require an LHA to develop and implement a written fair marketing plan.

(2) Contents of the Fair Marketing Plan. An LHA's Fair Marketing Plan shall include, but not necessarily be limited to, the following:

(a) Specification of the percentages for significant groups of minorities in the general population of the city or town and in the general population of the (primary) metropolitan statistical area; the applicable percentages based on the most current available census data shall be provided to the LHA by the Department.

(b) Provision for correction of any procedures or policies which have had a negative effect on applications by or selection of minorities in any such group.

(c) A description of special efforts which will be undertaken to attract applications from members of underrepresented minority groups (i.e., minority groups in which tenants bear lesser percentages than the groups' percentages in the general population of the municipality or statistical area); such special efforts shall include, but shall not necessarily be limited to, advertising in minority community newspapers and media, and contacting minority

community organizations. In any such ad, the LHA shall include the slogan "Equal Housing Opportunity" in type size at least equivalent to other wording.

(3) Non-Compliance with a Plan. If the Department determines that an LHA has not followed its Fair Marketing Plan, it shall require such LHA to take specific corrective measures. The corrective measures shall continue until the LHA demonstrates to the Department that the LHA is in compliance with its Fair Marketing Plan and that the consequences of its past violations have been remedied.

(4) Distinction Between Fair Marketing and Affirmative Action Preference. Provisions for an Affirmative Action Preference in tenant selection appears in 760 CMR 5.10. This preference involves fixed goals for placement of minorities. These placement goals were established for most LHAs in the mid 1980s as a specific remedy to deal with the underrepresentation of minorities in public housing. Fair Marketing Plans also seek to increase the numbers of minorities in public housing in instances where current demographic data about the population of a municipality or statistical area shows a significant underrepresentation. The means used by Fair Marketing to secure greater numbers of minority tenants is primarily vigorous recruitment of minority applicants; a preference with a placement rate is not employed as with the Affirmative Action Preference. However, the provision for Affirmative Action Preference remains in effect and, when applicable, shall be used in conjunction with Fair Marketing.

4.09: Ineligibility for Financial Assistance on Account of Civil Rights Noncompliance

In deciding whether to approve any LHA application for state financial assistance or for federal assistance administered by the Department, the Department shall consider any history of civil rights noncompliance, as determined by the Massachusetts Commission Against Discrimination (MCAD), according to the procedures agreed upon in a Memorandum of Understanding between the Department and MCAD dated November 14, 1985, as amended and in effect. The Department shall not approve an application for such funding in the event that MCAD has determined that the LHA is not then in compliance with civil rights requirements, unless the Department finds that approval of the application is in the public interest. Any such finding shall be forwarded in writing to MCAD.

4.10: Contracts for Goods, Services, Construction, Modernization, and Maintenance

(1) Whenever an LHA intends to contract for goods, services, construction, modernization, or maintenance, the LHA shall take affirmative action to attract MBE and WBE suppliers, manufacturers, and contractors. Records detailing affirmative action efforts under this section shall be kept by LHAs, subject to review by the Department. Every contract for goods, services, construction, modernization, or maintenance shall contain an article prohibiting discriminatory employment practices by the contractor, subcontractor, manufacturer, or supplier of goods or services on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. Each such contract shall require the contractor to use best efforts to employ qualified tenants for any positions which are open at the time the contract is awarded or which become open during the term of

the contract. Contracts shall be made pursuant to Massachusetts law and shall not provide for indemnification of the contractor by the LHA.

(2) With regard to every LHA contract of $100,000 or more for the design, construction, or modernization of a state-aided public housing development, the Department shall require, whenever feasible, that minimum percentages of the design and construction contract amounts shall be reserved to SOMWBA-certified MBEs and WBEs. These required minimum percentages shall be set forth in the Department's instructions for use of its front end contracting documents. Each contract shall specify the requisite percentages, if any, for MBE participation and for WBE participation.

4.11: Collective Bargaining by an LHA

(1) Notice to the Department. To safeguard the financial interests of the Commonwealth and to reduce the possibility of disapproval of increased state funding for a proposed collective bargaining agreement between an LHA and an employee organization affecting programs receiving financial assistance from the Department, the LHA shall take the following actions:

(a) Prior to bargaining with any employee organization, the LHA shall notify the Department, in writing, of its intention to begin collective bargaining, and promptly schedule and participate in a pre-bargaining conference with the Department to discuss pertinent matters pertaining to the collective bargaining. The LHA shall provide the Department with a description of the bargaining unit.

(b) At the pre-bargaining conference, the LHA and the Department shall review any current or expired collective bargaining agreements and proposals it anticipates will be made during negotiations either by the LHA or by the employee organization, and the costs and impacts of the proposals on the LHA and its employees.

(c) At the end of negotiations, the LHA shall submit a copy of the collective bargaining agreement to the Department for its review.

(d) Whenever proceedings are initiated before the Massachusetts Labor Relations Commission or any other commission, board, agency or court which may affect the terms of a collective bargaining agreement which is reviewable by the Department, the LHA shall provide written notice to the Department of the initiation of the proceeding and shall provide semiannual status reports thereafter.

(2) Department Review of the Collective Bargaining Agreement.

(a) The Department will review the following aspects of a collective bargaining agreement to determine whether it was based on sensible negotiating practices:

(i) its cost;
(ii) whether it promotes efficiency of operations;
(iii) whether it promotes stability of labor relations;
(iv) whether it promotes equal opportunity in employment; and
(v) whether the agreement adequately provides for the following:

a. A "no-strike or lockout" clause, wherein the employee organization agrees that employees will not engage in a strike, walkout, slowdown or

other work stoppage, and an agreement by the LHA that it will not lock out employees, during the term of the collective bargaining agreement.

b. A grievance and arbitration procedure, as authorized by M.G.L. c. 150E, §8.

c. A clause whereby all of the provisions of the collective bargaining agreement are subordinate to applicable provisions of federal or state law.

(b) During the Department's review, and on its request, the LHA shall promptly make available all information and documents that are relevant to the review and shall provide a written statement of the facts and reasons supporting any terms which may be under review.

(3) Noncompliance and Sanctions. If the applicable financial terms of a collective bargaining agreement exceed the LHA's approved budget or if its terms fail to reflect sensible negotiating practices, including inadequate regard for the financial interests of the Commonwealth, the Department may:

(a) Deny an increase in state funding to pay for the LHA's increased financial obligations under the agreement.

(b) Rate the LHA's management unsatisfactory on account of any such financial imbalance or any such poor negotiating practices.

(c) Take such other appropriate action as may be warranted under the circumstances and applicable law.

4.12: Waiver of Provisions by the Department

An LHA may submit to the Department a request for approval of a waiver of any provision of 760 CMR 4.00. The LHA shall specify in writing the reason why a waiver is necessary and appropriate. The Department in its discretion may approve a waiver if it determines that good cause exists for the waiver and that the waiver is appropriate under the circumstances and will be consistent with the purpose of the public housing program and all applicable provisions of law.

REGULATORY AUTHORITY

760 CMR 4.00: M.G.L. c. 121B, §§ 26, 29, and 34; M.G.L. c. 23B; E.O. 227, 237, 246, and 253

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DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Argeo Paul Cellucci, Governor
Jane Wallis Gumble, Director

760 CMR 6.00

OCCUPANCY STANDARDS AND TENANT PARTICIPATION FOR STATE AIDED HOUSING

EFFECTIVE OCTOBER 1, 1998

100 Cambridge Street
Boston, Massachusetts 02202-0044

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760 CMR 6.00: OCCUPANCY STANDARDS AND TENANT PARTICIPATION FOR STATE-AIDED HOUSING

Section

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Appendix A: Grievance Procedure Provisions for a Three Member Hearing Panel

Appendix B: Grievance Procedure Provisions for a Single Hearing Officer

6.01: Effective Date

(1) 760 CMR 6.00 became effective on October 1, 1998 (the "effective date" of this regulation). 760 CMR 6.00 replaces provisions formerly appearing in 760 CMR 1.00, 2.00, 3.00, 6.00 and 7.00 which were rescinded on the effective date. Waivers pursuant to these former regulations, in effect at an LHA immediately prior to the effective date, shall remain in effect unless and until revoked by the Department. As provided herein, leases and grievance procedures in use immediately prior to the effective date shall remain in use until new or amended leases and grievance procedures are approved by the Department. Recognition of local tenant organizations in effect on the effective date shall remain in effect unless recognition is revoked. Tenant participation agreements in effect on the effective date remain in effect according to their terms unless amended or revoked.

6.02: Applicability

(1) 760 CMR 6.00 applies to all persons residing in state-aided public housing, known as c. 200 family housing, c. 667 elderly/handicapped housing and c. 705 family housing, except as otherwise provided and further provided that persons residing in housing units receiving federal Section 8 subsidy shall have their rents determined in accordance with applicable federal Section 8 regulations. 760 CMR 6.00 also applies to those persons residing in state-aided public housing, known as c. 689 special needs housing, provided that the housing is under the direct management of an LHA and residents have individual leases with the LHA. 760 CMR 6.07 applies only to residents in c. 667 elderly/handicapped housing.

(2) 760 CMR 6.05 and 6.08 apply to participants in the Alternative Housing Voucher Program (AHVP). See 760 CMR 16.00 et seq.. 760 CMR 6.08 applies to participants in the Massachusetts Rental Voucher Program (MRVP). See 760 CMR 15.00 et seq..

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6.03: Definitions

Definitions set out in 760 CMR 5.00 shall apply in 760 CMR 6.00. The following definitions shall also apply:

Development - a housing project providing c. 200 family housing, c. 705 family housing or c. 667 elderly/handicapped housing.

Full-time student - a household member between the ages of 18 and 25, who is the dependent of another household member and who is enrolled in and attending an accredited educational or vocational institution and is carrying a course load that is considered full-time for day students under the standards and practices of the institution. Full-time student status shall remain in effect as long as the individual carries a full-time student course load in pursuit of a bachelor's degree, an associate's degree, or a diploma from an accredited educational institution or a certificate from an accredited vocational program (excluding apprenticeship programs). In no event shall full-time student status last longer than the length of time normally required for day students to complete the required course of study.

Grievance -

(1) an allegation by a tenant that an LHA or an LHA employee has acted or failed to act in accordance with the tenant's lease or any statute, regulation, or rule regarding the conditions of tenancy and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the tenant or a household member;

(2) an allegation by a program participant that an LHA or an LHA employee has acted or failed to act in accordance with any statute, regulation, or rule regarding the program and that the alleged action or failure to act has adversely affected the status, rights, duties, or welfare of the grievant or a household member; or

(3) an appeal by a data subject pursuant to 760 CMR 8.00.

(4) The meaning of a statute, regulation, or rule shall not be the subject of a grievance. A dispute between a tenant and another tenant or household member, in which the LHA is not involved, shall not be the subject of a grievance. A grievance shall not be filed by a tenant on behalf of another tenant or any household member of another tenant.

Grievant - any tenant or program participant who files a written grievance with an LHA in accordance with the LHA's grievance procedure. A grievant shall also include any person about whom the LHA holds data (data subject) who pursues an appeal pursuant to 760 CMR 8.00.

Guest - a person present in a unit or common area of a development at the invitation, expressed or implied, of a tenant or a member of a tenant household.

Hearing officer - an impartial person who conducts hearings on grievances (grievance hearings) in accordance with an approved grievance procedure and renders written decisions based on the material facts and applicable law.

Hearing panel - a group of impartial persons who conduct hearings on grievances (grievance hearings) in accordance with an approved grievance procedure and render written decisions based on the material facts and applicable law.

Household - one or more persons who have been determined by the LHA to be collectively eligible for state-aided housing and who are listed on the current lease for an LHA unit executed by an LHA authorizing the person(s) to reside in the unit. Persons listed on an application to an LHA to be determined collectively eligible to reside in an LHA unit as a household may also be referred to as a household where the context so requires.

Household member - a person who is a member of a household which has been authorized by the LHA in a lease or lease addendum to reside in an LHA unit. The tenant, as defined herein, is a household member.

Local tenant organization (LTO) - an association of tenants which has been officially recognized by an LHA to represent tenants residing in some or all of the LHA's state aided public housing units.

Notice of Termination - Notice from an LHA to a tenant that the tenant's lease is to be terminated. A notice of termination may include a notice to quit. A notice of termination or accompanying document shall advise the tenant whether tenant has a right to a grievance hearing and, if so, the time for requesting a grievance hearing. It shall advise tenant of the right to be represented at a grievance hearing and of the right to inspect relevant documents prior to the hearing. It shall advise tenant that, if tenant remains in the unit past the specified lease termination date, eviction would be pursued through court action in which tenant would have a right to present in person or by a lawyer any legal defenses which tenant might have. It shall specify the name and address of a local legal services agency (if any). It should advise the tenant of the opportunity (if available) to request to meet with the LHA to discuss the reasons for termination and whether termination could be avoided.

Personal care attendant (PCA) - a person who resides with a household member with a disability and who (a) provides necessary assistance in activities of daily living to such household member insofar as he or she requires such assistance on account of his or her disability; (b) is not obligated for support of the household member; (c) is paid for the fair value of such assistance; and (d) would not be residing in the unit except to provide such necessary assistance to the household member.

Pet - a domesticated animal of a species that is commonly kept as a household pet in the community. A cat, dog, gerbil, or hamster is an example of a domesticated animal which is commonly kept as a household pet. A monkey or snake is an example of an animal which is not commonly kept as a household pet in the community. A service animal which is specially trained to assist an individual with a disability in specific activities of daily living (for example, a dog guiding individuals with impaired vision or alerting individuals with impaired hearing) is not considered a pet for which permission to keep is required when it is kept in a safe and sanitary manner by an individual with a disability to whom the animal gives necessary assistance in activities of daily living; a service animal shall be considered a pet in computing the number of pets kept. Caged birds, which are not unreasonably noisy, or fish in tanks are not considered pets for which permission to keep is required.

Pet committee - a local committee established in accordance with Chapter 151 of the Acts of 1989 in the manner prescribed in the pet guidelines.

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Pet grievance panel - two or more persons appointed by the LHA to resolve disputes arising in elderly/handicapped state-aided housing involving pets in cases where the disputes have not been resolved by the pet committee; the procedure of dispute resolution shall be specified in the pet guidelines.

Pet guidelines - guidelines issued by the Department for pet ownership in elderly/handicapped state-aided public housing. These guidelines may be revised periodically by the Department after consultation with the Massachusetts Society for the Prevention of Cruelty to Animals and with the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials.

Pet rider - a part of the lease for a unit of elderly/handicapped state-aided housing giving approval to the tenant for pet ownership and setting out or incorporating the terms and conditions for pet ownership.

Program Participant - a Voucher Holder, as defined in 760 CMR 15.00 or in 760 CMR 16.00, who has become a Participant, as therein defined, in the MRVP or AHVP.

Tenant - one or more adult persons who sign(s) a lease for an LHA unit and who is (are) responsible for payment of rent and satisfaction of lease provisions and responsible for the conduct of other household members and for the conduct of guests.

Utilities - any or all of the following: electricity and any other fuel for heat, hot water, or cooking.

6.04: Rent Determination

(1) Amount of Rent.

(a) Where the tenant does not pay for utilities, rent shall be 30% of monthly net household income as determined pursuant to 760 CMR 6.05.

(b) Where the tenant pays for some or all utilities, rent shall be 25% of monthly net household income as determined pursuant to 760 CMR 6.05.

(2) Rent Payment.

(a) Tenant shall pay rent monthly in advance on or before the first day of each month. Rent for any fraction of a month of occupancy at the beginning or end of the term shall be charged on a pro rata basis. The monthly rent shall remain in effect until a new monthly rent shall have been redetermined by the LHA in accordance with 760 CMR 6.04(4) or (5).

(b) During the term while a lease is in effect the LHA shall accept as rent all payments which the tenant shall have designated as rent. The acceptance of such rental payments by the LHA shall not constitute a waiver of payment for other amounts due or of any other past, present, or future obligation under the tenant's lease. Following termination of the lease, if tenant fails to vacate, tenant shall pay monthly, in advance, the fair value of use and occupancy of the unit as determined by the LHA, but not less than the rent in effect at the time of termination, provided that if the termination is contested in court, no amount higher than such rent shall be charged unless and until the termination is upheld or approved by the court. Payment for such use and occupancy, however designated, shall not create a new tenancy.

(3) Failure to Pay Rent. In the event that a tenant shall fail to pay all or any part of the rent within seven (7) days of its due date, the LHA may declare the unpaid rent delinquent and issue a notice of termination of lease. Prior to issuing such a notice, except where the tenant is habitually delinquent in paying rent and has had a prior opportunity for discussion within the prior six months, the LHA shall provide the tenant with an opportunity to discuss the reason for the late payment.

In the event that tenant shall fail to pay all or any part of the rent within thirty (30) days of its due date, the LHA may charge tenant interest or a penalty in accordance with applicable law and with the terms of the tenant's lease. If tenant shall have shown good cause for late payment to the LHA and if the LHA and the tenant shall have entered a repayment agreement, the LHA in its discretion may waive the interest or penalty. By charging interest or a penalty for late payment of rent, the LHA shall not have condoned tenant's breach of tenant's obligation to pay rent, and the LHA shall retain the rights to issue a notice of termination of the lease, to bring eviction proceedings against tenant and to collect arrearages, constable fees and costs on account of the tenant's failure to pay rent when due.

(4) Annual Redetermination

(a) The Redetermination Date. The LHA shall redetermine each tenant's monthly rent once annually to be effective on a specific redetermination date which shall be the first day of a month. This redetermination date should be the same each year unless the LHA gives the tenant reasonable advance notice of a different date no more than a year subsequent to the most recent notice of rent as determined by the LHA.

(b) The Notice of Redetermination. At least sixty (60) days prior to the redetermination date, the LHA shall send the tenant written notice that rent shall be redetermined effective on the redetermination date and in this notice of redetermination shall request pertinent information as to the household's income, employment, continued eligibility, and composition.

(c) Response by the Tenant. Within thirty (30) days following the date of the notice of redetermination, the tenant shall provide, under pains and penalties of perjury, sufficient complete and accurate information for the LHA to make a reliable determination of the household's income, exclusions from income, and applicable deductions.

(d) The Redetermined Rent. No less than fourteen (14) days prior to the redetermination date, the LHA shall redetermine rent by computing the applicable percentage of annual net household income. In general, annual net household income shall be an annualization of then current monthly net household income. However, where annualization of monthly income is unlikely to reflect actual annual income, the LHA may use some other method for determining the annual amount of income, including use of the prior year's income.

If within the time allotted, the tenant shall have failed to provide sufficient, complete, and accurate information in order for the LHA to make a reliable redetermination of the household's monthly net household income, the LHA may make a redetermination of such income based on whatever reliable information which it has or may continue to use its most recent income redetermination. The LHA may thereafter make an adjustment of rent retroactive to the redetermination date, following receipt of more complete and accurate information.

(e) Notice and Effective Date of the Redetermined Rent. The LHA shall give the tenant no less than fourteen (14) days prior written notice of the amount of the rent to be effective on the redetermination date. In the event that the information provided by or on behalf of the tenant shall have been incomplete or inaccurate, upon receipt of more complete or accurate information, in addition to its other remedies, the LHA shall

appropriately adjust the rent. Following such adjustment, the LHA shall give the tenant an amended written notice of the redetermined rent which shall be retroactively effective to the redetermination date. Each notice of redetermined rent shall set out the monthly gross household income (one-twelfth of annual gross household income) and the monthly net household income (one-twelfth of annual net household income) on the basis of which the redetermined monthly rent was computed.

(5) Interim Redetermination of Rent.

(a) Increases. If in any month the monthly gross household income of a tenant household increases by ten percent (10%) or more from the amount contained in the most recent notice of rent as (re)determined by the LHA, the tenant shall report any such increase, including any changes in income, exclusions and deductions. The tenant shall report the increase to the LHA by the seventh day of the month following the month in which the increase occurred, provided that if the increase was anticipated in the prior computation of gross household income, the tenant need not report the increase.

The LHA shall require verification of such increase in income. If as a result the amount of rent increases, at least fourteen (14) days before the effective date of a rent increase, the LHA shall give the tenant a written notice of the redetermined rent. Any such increase in rent shall be made effective on the first day of a month. The notice of redetermined rent shall set out the monthly gross household income and the monthly net household income, on the basis of which the redetermined monthly rent was calculated.

In the event that a tenant shall have failed to report such an increase in income by the seventh day of the month following the increase, in addition to its other remedies, the LHA, upon discovery that increased rent was due, shall make the effective date of the increase in rent retroactive to the first day of the second month following the increase in income.

(b) Decreases. If, in any month, the monthly gross household income of a tenant household decreases, , the tenant may provide the LHA with verified information substantiating the decrease in gross income. Following receipt of such information, the LHA shall redetermine rent. The LHA shall give the tenant written notice of any decrease in rent which shall be effective on the first day of the month following receipt of the information or at such earlier time as the LHA shall find to be warranted in the event that circumstances delayed receipt of verified information. The notice shall set out the monthly gross household income and the monthly net household income, on the basis of which the redetermined monthly rent was calculated.

(6) Verification. The tenant shall provide and authorize reasonable verification of information regarding income, exclusions from income and deductions (whether at initial determination or at any redetermination) in order to insure reliability of the information. For wages, interest, dividends, annuities, pensions or recurring lottery winnings, the tenant shall submit copies of the prior year's tax-reporting forms received by the tenant (including W-2 forms, W-2G forms, and 1099 forms). For income from a fiduciary the tenant shall submit a copy of the prior year's K-1 form regarding such income. For self-employment income the tenant shall submit a copy of the prior year's Schedule C of US Form 1040. The tenant shall also submit copies of other tax reporting forms as are appropriate for other types of income.

The LHA may also require written third-party verification (verification by a reliable person or entity, other than the tenant or household member, with knowledge of the facts) of one or more items of income, exclusions, or deductions in the event that the LHA finds that the documentation provided by the tenant is not adequate. In

such a case, the LHA may also verify income, exclusions, or deductions by checking with the sources. Verification of income, exclusions or deductions, if not complete by the rent redetermination date, may continue until completion. The tenant shall assist the LHA in securing reasonable verification and shall promptly provide all written authorizations for such verification upon request by the LHA.

If the LHA has reasonable cause to believe that any member of the household is supplying false or incomplete information about his or her income, upon request by the LHA the tenant or other household member shall sign an appropriate Internal Revenue Service form, to authorize the IRS to furnish the LHA with a copy of the first page of the prior year's US Form 1040 filed by the tenant or other household member. Information which may have been provided by the Department of Revenue through a wage and bank match or otherwise may be used for verification of income, exclusions, and or deductions.

(7) Grievances on the Amount of the Redetermined Rent and Time for Payment. In the event that a tenant files a grievance as to the amount of a redetermined rent within fourteen (14) days of the LHA's notice of the redetermined rent, the tenant shall continue to pay the rent then in effect (unless the redetermined rent is lower) until disposition of the grievance. Following disposition of the grievance, the tenant shall forthwith pay any additional amounts determined to have been due but not paid since the effective date set out in the notice of redetermined rent or the LHA shall credit the tenant with any amounts paid but determined not to have been due. In the absence of a grievance, the redetermined rent shall be paid beginning on its effective date.

(8) Nondisclosure or Misrepresentation of Income. If a tenant shall misrepresent, fail to disclose, or fail to disclose in a timely manner pertinent information which would increase net household income, upon request tenant shall pay the balance of rent, which otherwise should have been paid. Interest on such balance may be charged in accordance with law. Such misrepresentation or nondisclosure without good cause shall constitute cause for termination of the lease and eviction of the tenant if the consequent underpayment of rent was 10% or more of the monthly rent which should have been paid.

(9) Late Payments of Income. If a tenant receives any includable income at a date later than the date when the income would have been paid in the normal course (such as payment of past-due workers' compensation benefits for lost wages, past-due SSI or SSDI benefits, or retroactive salary increases, and if such income has not been included in the determination of household income), tenant shall report receipt of the income to the LHA within seven (7) days after receipt. The LHA shall charge a one-time retroactive rent charge on account of any part of such income which in the normal course would have been paid at a time when tenant occupied an LHA unit. A tenant who receives and timely reports receipt of such income shall pay any such retroactive rent due on account of such income without interest upon receipt of a bill from the LHA. If tenant shall fail to report such income or shall fail to make such a one-time retroactive rent payment within thirty (30) days of receipt of a bill, the LHA may charge interest on the additional rent due for the period beginning thirty days after receipt of the income at a rate of interest in accordance with law and the LHA's rules.

6.05: Determination of Gross Household Income and Net Household Income

(1) The Computation of Net Household Income. Rent is a percentage of net household income, as provided in 760 CMR 6.04(1), (either 25% or 30%). In order to determine net household income, the LHA shall first determine gross household income. Gross household income includes the income items set out in (2) below and excludes

the non-income items set out in (3) below. The deductions set out in (4) below are deducted from gross household income so computed, and the result is net household income.

(2) Inclusions in Gross Household Income. Gross household income shall be the total of the following items:

(a) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.

(b) Income from the operation of a business or profession by each self-employed household member after deduction for the ordinary and necessary expenses of the business or profession. The deductible expenses of the business or profession shall not exceed 85% of the gross receipts of the business or profession. Deductible expenses of the business or profession shall not include rent or utilities paid for the tenant's unit if the business or profession is located in the tenant's unit.

(c) Income of any kind from real or personal property including rent, dividends, and interest. Amortization of capital indebtedness and depreciation shall not be deducted in computing net income. Any realization of taxable capital gain on sale or transfer of an investment or other real or personal property shall be included in income. If the household has marketable real or personal property with a fair market value exceeding $5000 (excluding any automobile used as the primary means of transportation by one or more household members), gross household income shall include the higher of actual income derived from any such property or a percentage of the value of such property. This percentage shall be the current passbook savings rate, as determined from time to time by the federal Department of Housing and Urban Development for federally assisted housing or as otherwise determined by the Department.

(d) Periodic payments received from social security, annuities, retirement funds, and pensions, individual retirement accounts, and other similar types of periodic payments of retirement benefits, excluding non-taxable amounts which constitute return of capital and are specifically identified as such by payor.

(e) Payments in lieu of earnings, such as unemployment compensation; Supplemental Security Income (SSI); Social Security Disability Income (SSDI); and benefits in lieu of earnings under disability insurance, health and accident insurance or workers' compensation. An unallocated lump sum settlement or similar payment all or partly on account of lost wages resulting from an injury shall be equitably allocated to reflect a monthly payment on account of lost wages for the period during which the recipient is likely to be disabled from the injury and the recipient will be deemed to receive such a monthly payment each month during the continuance of his or her disability until the allocated funds are deemed exhausted. Payments from the government, subsequently reimbursed to the government, are not to be included as income.

(f) Regularly recurring contributions or gifts received from non-household members; to be regularly recurring a contribution or gift must occur at least twice a year for two or more years, provided that a contribution or gift in excess of $2,000 which occurs once a year from year to year for two or more years shall also be deemed to be regularly recurring.

(g) Regular payments of public assistance, excluding food stamps.

(h) Payments received for the support of a minor, such as payments for child support, foster care, social security, or public assistance, including payments nominally made to a minor for his or her support but controlled for his or her benefit by a household member who is responsible for his or her support.

(i) Lottery winnings, gambling winnings and similar receipts.

(j) Receipts of principal and income from the trustee of a trust, and receipts of income from the executor or administrator of an estate or from some other fiduciary.

(k) Alimony or payment for separate support.

(3)

(3) Exclusions from Gross Household Income. Gross household income shall not include any of the following items:

(a) Gifts which are not regularly recurring.

(b) Amounts (including lump-sums), which are specifically received for the cost of medical care, or which are made to compensate for personal injury or damage to or loss of property under health, accident or liability insurance, worker's compensation, judgments or settlements of claims, insofar as these payments do not compensate for loss of income for a period when the recipient was or would be a tenant.

(c) Amounts of educational scholarships or stipends for housing paid by a non-household member for a student at an educational institution, including amounts paid for these purposes to part-time students, whether paid directly to the student or the educational institution, and amounts paid by the United States Government to a veteran for use in paying tuition, fees, or the cost of books, to the extent that such payments are so used.

(d) The special pay to a member of the armed forces on account of service in a war zone.

(e) Relocation payments made pursuant to state or federal law.

(f) Payments received from the Social Security Administration program known as the Plan to Attain Self Sufficiency (PASS), provided that recipient fulfills all PASS program requirements.

(g) The value of food stamps.

(h) Payments received by participants or volunteers in programs pursuant to the Domestic Volunteer Service Act of 1973.

(i) The increased amount of income earned from employment by one or more household members if the increase in earned income otherwise would result in a rent increase provided that: (1) the household's income has been derived, at least in part, from Transitional Aid to Families with Dependent Children (TAFDC), Emergency Assistance to the Elderly, Disabled and Children Program (EAEDC), Supplemental Security Income (SSI), Social Security Disability Income (SSDI) or successor program for each of the previous 12 months; (2) the household's increased earned income has been accompanied by a decrease in the amount of TAFDC, EAEDC, SSI, SSDI or public assistance from a successor program; and (3) at the commencement of this exclusion the recipient of such public assistance would have remained eligible for such assistance if the income had not been earned. This earned income exclusion shall be in effect for one continuous 12 month period, regardless of any changes or gaps in employment during that period. This exclusion may be exercised by the tenant when a household member has procured either full or part-time employment. It shall be within the tenant's sole discretion whether or when to exercise this one-time earned income exclusion.

(j) Payments for a household member in association with participation in a bona fide program providing training for employment, approved by the Department or sponsored or administered by a government agency, to cover costs related to training or employment, such as transportation, program fees, books, or child care (during training). This exclusion does not apply to wages received through programs for training for employment, such as wages from on-the-job training.

(k) Wages and/or salary earned by a full-time student, as defined herein, or by an unemancipated minor.

(l) Income of a live-in personal care attendant (PCA), who is not a family member, who is paid for the fair value of his or her services to a household member with a disability and whose income is not available for the needs of any household member, provided that the PCA shall be required to substantiate that he or she receives wages for the fair value of his or her services and that such income is not available for the needs of any household member.

(m) Inheritances and life insurance proceeds. This exclusion does not apply to post-death interest paid on inheritances or insurance proceeds.

(n) At the discretion of the LHA, with respect to an unemployable disabled veteran, whose disability occurred in connection with military service, all but $1,800 of the annual amount received by the unemployable disabled

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veteran from the United States Government on account of such disability; if the LHA in its discretion excludes all but $1,800 of such amount, no deductions shall be applied against that $1,800.

(o) A return of capital on sale or transfer of an investment or of other real or personal property.

(4) Deductions from Gross Household Income. Net household income shall be gross household income less the following deductions but in no event shall be less than zero:

(a) $400 for a household in which the tenant is an elderly person of low income or a handicapped person of low income.

(b) $300 for each unemancipated minor household member (under age 18).

(c) $300 for each adult household member (other than the tenant); this deduction is limited by the amount by which the gross income of such adult household member exceeds all other deductions claimed against his or her income.

(d) A deduction for heat in the amount prescribed by the Department's schedule of heat deductions; this deduction is only available to a household which separately pays for the cost of heat.

(e) Payments for necessary medical expenses (including co-payment amounts) which are not covered by insurance or otherwise reimbursed, provided that such expenses are in excess of 3% of annual gross household income and are paid by household members. Payments for medical health insurance are considered medical expenses.

(f) Payments for the care of child(ren) or of a sick or incapacitated household member provided that the LHA shall have determined the payments to be necessary for the employment of another household member who would otherwise have provided such care; the total amount deducted for this deduction and the deductions in (g) and (h) for this household member who makes the payment shall not exceed his or her gross income.

(g) Child support, separate support, and/or alimony paid under court order or court approved agreement by a household member for the support of a minor child, spouse, or ex-spouse, not residing with the household, provided that the total amount deducted for this deduction and the deductions in (f) and (h) for this household member shall not exceed his or her gross income.

(h) Non-reimbursable payments of tuition and fees of vocationally related post-secondary education of a household member who is not a full-time student, provided that the amount deducted for this deduction and the deductions in (f) and (g) for this household member shall not exceed his or her gross income.

(i) Non-reimbursable payments for reasonable and necessary housekeeping or personal care services for a household member with a disability who as a result of the disability is physically unable to perform the housekeeping or personal care services provided that no household member is reasonably available to perform these services.

(j) Travel expense, in excess of the cost of the least expensive available transportation, for a household member with a disability who as a result of the disability is physically unable to use the least expensive available transportation and who uses the least expensive transportation practical in connection with necessary activities which cannot be performed by another household member.

6.06: Lease Requirements

(1) Lease as a Condition of Public Housing; Approval of Lease Terms by the Department; Prior Leases to Remain In Effect Pending Approval of New Lease Terms by the Department; Implementation of New Lease Terms. A lease executed by the LHA and the tenant for each unit of public housing shall be a condition of occupancy of the unit by the tenant and other household members. The terms of the lease used by the LHA may vary by program

but all such terms shall be approved by the Department in advance of any use by the LHA. In developing a lease to be submitted for approval by the Department, the LHA shall consult with any affected LTO(s). In the event of disagreement over a lease term in a lease submitted for approval by the Department, the LTO may present its position to the Department. Pending approval by the Department of a lease containing the lease requirements set out herein the LHA shall continue to use the lease then in effect.

Following approval by the Department of a new lease or amended lease terms, new and existing tenants shall execute the new or amended lease as a condition of occupancy. New tenants shall execute the new or amended lease at the times their tenancies are established. Existing tenants shall execute the new or amended lease at the time of annual redeterminations, and failure by a tenant at that time to execute a new or amended lease (approved by the Department) shall be cause for eviction. Until the new or amended lease is executed as required herein, the terms of the existing lease shall remain in effect unless the lease has been amended by applicable law or terminated for cause.

(2) Provisions as to Rent. Each new or amended lease submitted for approval by the Department shall contain provisions which are consistent with the provisions concerning the amount of rent, rent payment, failure to pay rent, annual and interim redeterminations of rent and the other matters set out in 760 CMR 6.04. The lease may require payment of interest or a penalty for non-payment or late payment of rent in accordance with applicable law without any waiver of the LHA's right to evict tenant for non-payment of rent and to collect arrearages, constable's fees and costs in any such eviction action.

(3) Provisions as to Occupancy and Use of the Unit. Each new or amended lease submitted for approval by the Department shall contain provisions which provide for the following:

(a) The names of each household member who is authorized to occupy the unit in addition to the tenant shall be set out in the lease. No other person (excepting guests) shall occupy the unit. Each household member shall be required to reside in the unit for at least nine months in any twelve month period unless the LHA shall have found good cause for an absence of longer than three months. The tenant shall be responsible for the conduct of all household members.

(b) The tenant shall not sublet or transfer possession of the unit. Tenant shall not take in boarders or lodgers and, except as provided in (d), shall not use or permit use of the unit for any purpose other than as a private dwelling solely for tenant and the other members of tenant's household who are listed on the lease or who subsequently have been approved by the LHA and have been listed on a written lease addendum.

(c) The stay of any overnight guest shall be limited to no more than a total of 21 nights (21 days if the guest regularly sleeps during the day) during any 12 month period unless the LHA for good cause otherwise consents to a longer period in writing prior to the expiration of 21 nights or such longer period as may have been authorized. The tenant shall be responsible for the conduct of all guests, including his or her own, and those of household members. The number of household members and overnight guests shall not at any time exceed the permissible limit of the State Sanitary Code.

(d) With the LHA's approval, tenant and household members may engage in legal profit-making activities which are incidental to the primary use of the unit as a private dwelling so long as suitable general liability insurance coverage is provided if the LHA shall deem it necessary and the activities will: (i) not cause and will not be likely to cause any disturbance or inconvenience to neighbors; (ii) comply with any applicable zoning and any applicable federal, state or local licensing requirements; (iii) not significantly increase utility

or water consumption (unless tenant separately pays for utilities); and (iv) not result in any other additional expense to the LHA.

(e) In the event the tenant ceases to occupy the unit, provided that the tenancy has not been terminated and is not in the process of being terminated and there is no pending eviction action and provided that the conditions set out in the definition of Family (Household) in 760 CMR 5.03 have been met, a household comprising of the remaining household members shall be given permission for continued occupancy. Any rent due or past due on the date when the tenant ceases to occupy the unit shall become the obligation of the new tenant in such household.

(f) In the event of divorce or separation and in the absence of an agreement between the affected household members, a court may determine entitlement to continued occupancy as set out in the definition of Family (Household) in 760 CMR 5.03.

(g) The tenant may delete a household member named in an existing lease by a new lease or a lease amendment signed by tenant and the LHA. Any person so deleted shall cease to be a household member and shall cease to occupy the unit.

(h) Before any person not named in the lease may be added as a household member (excepting a new-born), tenant and the person involved shall have applied in writing to the LHA for approval of a household including such person and the LHA shall have screened the person, of age 10 or more, as an applicant and found him or her to be qualified. The enlarged household shall meet all applicable eligibility requirements for a household initially applying for housing, except income shall be within the limit for continued occupancy and the leased unit shall be of appropriate unit size for the enlarged household.

(4) Provisions as to Certain Obligations of the LHA. The lease shall specify the following obligations of the LHA:

(a) To deliver a decent, safe and sanitary unit with rekeyed locks and a working stove at initial occupancy.

(b) To provide legally requisite heat (or heating facilities in the event tenant shall be responsible for paying the cost of fuel for heat).

(c) To provide legally requisite hot water (or hot water heating facilities in the event tenant shall be responsible for paying the cost of fuel for hot water).

(d) To provide reasonable extermination services.

(e) To maintain the structural elements of the building containing the unit.

(f) To maintain common areas of the building open to the household.

(g) To make repairs to the unit within a reasonable time after notice that repairs are needed and to give priority to repairs needed to correct a condition endangering the household.

(h) To provide, after a request by tenant, copies of pertinent rules, policies and regulations affecting the tenant's tenancy, provided that there may be a charge for such copies if the tenant has previously been provided with copies of some or all of the requested material.

(i) To give tenant notice of at least 48 hours prior to accessing the unit for inspections or routine maintenance in the absence of an agreed time; in the event of repairs or maintenance in response to a request by tenant, in the absence of an agreed time, to give reasonable notice, whenever possible given at least on the day prior to access; in the event of an emergency endangering or appearing to endanger life or property, in the absence of an agreed time, to give tenant whatever reasonable notice which the circumstances may permit before accessing the unit to deal with the emergency; and, if no adult household member shall be present at the time of access, to leave a written notice specifying the time and reason for access.

(j) To notify tenant in writing of the specific grounds for any proposed adverse action against tenant and to notify tenant of tenant's right to request a grievance hearing if available.

(k) To preserve the confidentiality of records in accordance with and to the extent provided by 760 CMR 8.00 and other applicable law.

(l) To respect tenant's right to organize and/or join a tenant association and/or local tenant organization.

(m) To redetermine rents promptly at the time of annual redetermination and at the time of any interim redetermination.

(n) To process applications for transfer promptly.

(o) To process applications which seek to add a household member promptly and to determine the qualification of each such proposed household member pursuant to 760 CMR 5.00 promptly.

(p) To commence eviction proceedings if the LHA determines that such proceedings are warranted under the circumstances and likely to succeed against other tenants whose behavior or the behavior of their household members or of their guests has jeopardized the health or safety of tenant or other household member.

(q) To provide assistance which the LHA determines to be reasonable and appropriate to a household member who is a victim of domestic violence.

(r) To rekey locks promptly upon request of a household member who has obtained a restraining order which is in force against another household member on account of domestic violence and to waive charges for the cost where circumstances warrant.

(5) Provisions as to Certain Obligations of the Tenant. The lease shall specify the following obligations of the tenant, including responsibility for the behavior of household members and guests:

(a) To pay rent and the cost of any utilities for which the tenant is responsible.

(b) To transfer to a unit of appropriate unit size if the number of household members decreases or if transfer is necessitated by modernization work, or by other good cause which shall have been approved by the Department.

(c) For tenant, household members and guests: to conduct themselves in a quiet and peaceful manner and to refrain from making unreasonably loud noise or noises in the unit or on the LHA's property.

(d) For tenant, household members and guests: not to injure, endanger, threaten, harass or unreasonably disturb other tenants, the LHA's officers and employees, and other persons lawfully in the unit or on the LHA's property.

(e) For tenant, household members and guests: to create no nuisance in the unit, on LHA property, or in its vicinity and to refrain from any and all criminal conduct in the unit, on LHA property, and in its vicinity.

(f) To keep the unit in safe, clean and sanitary condition and to properly store and dispose of all garbage, trash, refuse, and any other waste.

(g) For tenant, household members and guests: to properly use and care for the plumbing and other utility services; and to install no major appliances or waterbeds without prior written authorization from the LHA.

(h) For tenant, household members and guests: to refrain from damaging the unit or any other property of the LHA.

(i) To pay the cost of labor and materials necessary to repair or replace any LHA property damaged or destroyed by the negligence or intentional act of tenant, any household member, or any guest.

(j) For tenant, household members and guests: to keep no pets in the unit or on LHA property except as may be otherwise authorized.

(k) For tenant, household members and guests: to comply with the reasonable rules and policies established by the LHA for its developments.

(l) For tenant, household members and guests: to make or allow no alterations or additions to the unit or other property of the LHA without the LHA's prior written consent.

(m) To permit access to the unit by the LHA for inspections or routine maintenance following notice of at least 48 hours; in the event of repairs or maintenance in response to a request by tenant, to permit access after reasonable notice; and in the event of an emergency, endangering or appearing to endanger life or property, to permit access after whatever reasonable notice which the circumstances may permit.

(n) To keep all smoke detectors and other fire safety equipment in the unit unobstructed; for tenant, household members, and guests: to do nothing to render any such detector or other fire safety equipment inoperational and to give prompt notice to the LHA of any inoperational detector or other such fire safety equipment.

(o) For tenant, household members, and guests: to vacate promptly upon termination of the lease or, if tenant contests termination of the lease, at other agreed time or time established by court order.

(p) To pay the LHA's costs in an eviction action commenced because of breach of the lease or because of other good cause for termination of the lease or in an action for voiding the lease pursuant to M.G.L. c. 139 § 19 if the action results in the termination of the lease.

(q) To sign a new lease or lease addendum whenever necessary to reflect a redetermined rent, a change in household size, or change(s) in terms and conditions of tenancy.

(r) For tenant and household members: to participate in any wage, tax, and/or bank match system required by the Department and permissible under law and to provide upon request the information and authorizations necessary for such a wage, tax, and/or bank match.

(s) Subject to any applicable law, for tenant and each other adult household member, to provide the LHA with his or her social security number, and to authorize use of such social security number for use by the LHA for verification of income and assets of the household through the Massachusetts Department of Revenue's integrated tax system, wage reporting, and bank match systems or similar means of verification.

(6) Provisions on Reasons for Termination of the Lease. The lease shall specify reasons for termination of the lease and of occupancy of the unit by tenant and tenant's household; the reasons shall include the following:

(a) Tenant's written notice of termination mailed or delivered to the LHA at least 30 days prior to termination.

(b) Tenant's nonpayment of some or all rent.

(c) Breach or violation by tenant or a household member of any of the material terms of the lease, including but not limited to breach or violation of any of the tenant's obligations specified in these regulations.

(d) Breach or violation by a guest of the tenant or of a household member of any of the material terms of the lease where the tenant or the household member knew or should have known that there was a reasonable possibility that the guest would engage in misconduct.

(e) Any of the criminal conduct, specified as (1) - (7) in M.G.L. c. 121B §32 (added by St. 1995 c. 179§5), by tenant or a household member; or any such conduct by a guest of the tenant or of a household member where the tenant knew or should have known that there was a reasonable possibility the guest would engage in misconduct.

(f) Income which exceeds the maximum allowable for a household under applicable regulations or authorization, provided that the LHA may provide an exemption for up to six months if tenant can show there to be a hardship which prevents relocation of the household to unsubsidized housing.

(g) Tenant's failure to supply complete and accurate information necessary for a rent redetermination or for a determination of eligibility for continued occupancy; or tenant's failure to provide reasonable cooperation or authorizations to the LHA in securing verification of such information.

(h) Failure to supply complete and accurate information in tenant's application for public housing or in tenant's request for a priority status or for a preference or in the documentation submitted in support of tenant's application for public housing or in support of a request for a priority status, for a preference, for addition of a household member, or for a transfer, if tenant knew or should have known the information to be incomplete or inaccurate, and if complete and accurate information would have provided: (i) cause for finding tenant ineligible or unqualified for public housing; (ii) cause for determining tenant not entitled to such priority status, preference, or transfer; (iii) cause for housing tenant in a smaller unit; or (iv) cause for establishing a materially higher rent.

(i) Failure to sign a lease (or a lease amendment) received from the LHA which contain lease provisions approved by the Department or which is required because of changes in composition or income of tenant's household.

(j) In the event that tenant has knowledge of a court order barring a person from the LHA's property or from the tenant's unit, the failure by tenant or a household member to take all necessary steps to exclude such person from the tenant's unit or the LHA's property.

(k) After an offer of a replacement unit of appropriate unit size, failure to vacate a unit because of a decrease in household size, modernization work, or other good cause which shall have been approved by the Department.

(l) Failure to pay any amounts owed to the LHA by the tenant pursuant to or in accordance with the terms of the lease.

(7) Provisions Requiring a Grievance Hearing as a Condition of Lease Termination Under Certain Circumstances. The lease shall contain provisions that, after the LHA gives a notice of lease termination to a tenant, the tenant may request a grievance hearing regarding whether good cause exists for terminating the lease, provided that no grievance hearing shall be requested or held under any of the circumstances specified as (1) - (8) in M.G.L. c. 121B §32, including the following circumstances:

(a) in the event of non-payment of rent;

(b) in the event the LHA has reason to believe that tenant or a household member:

(i) has unlawfully caused serious physical harm to another tenant or an employee of the LHA or any other person lawfully on the LHA's property;

(ii) has unlawfully threatened to cause serious physical harm to any member of a tenant household or an LHA employee or any person lawfully on the LHA's property;

(iii) has unlawfully destroyed, vandalized or stolen property of any member of a tenant household or of the LHA or of any person lawfully on the LHA's property, if such conduct involved a serious threat to the health or safety of any such person;

(iv) has unlawfully possessed, carried, or kept a weapon on or adjacent to the LHA's property in violation of M.G.L. c.269 §10;

(v) has unlawfully possessed or used an explosive or incendiary device on or adjacent to the LHA's property or has otherwise violated M.G.L. c. 266 §§101, 102, 102A or 102B;

(vi) has unlawfully possessed, sold, or possessed with intent to distribute a class A, B or C controlled substance, as defined in M.G.L. c. 94C §31, on or adjacent to the LHA's property;

(vii) has engaged in other criminal conduct which has seriously threatened or endangered the health or safety of any member of a tenant household, an LHA employee, or any person lawfully on the LHA's property; or

(viii) has engaged in behavior which would be cause for voiding the lease pursuant to the provisions of M.G.L. c. 139 §19; or

(c) in the event the LHA has reason to believe that a guest of tenant or a guest of a household member has engaged in any of the behavior listed in (b) and that tenant knew beforehand or should have known beforehand that there was a reasonable possibility that the guest would engage in misconduct.

(8) Provisions Regarding a Grievance Hearing Prior to Lease Termination. The lease shall provide that in circumstances where a grievance hearing as to lease termination is permissible the following shall apply:

(a) The tenant shall make a written request for a grievance hearing to the LHA within seven (7) days after a notice of lease termination has been given to tenant. The grievance hearing shall be held pursuant to the LHA's grievance procedure. At the grievance hearing any additional reason for termination of the lease, which arose subsequent to the date of the notice of termination, shall be considered so long as the LHA has given written notice to the tenant as to the additional reason not less than three (3) days before the hearing, or, if a reason for eviction shall have arisen within such three day period, a subsequent session of the hearing may be scheduled on not less than three (3) days notice to consider such reason.

(b) In cases where tenant is entitled to a grievance hearing and has made a timely request, the LHA shall not file a summary process summons and complaint pending the hearing and a decision or other resolution in the LHA's favor. The LHA shall schedule such a hearing on a date within thirty (30) days from the date of a request for a grievance hearing and at least fifteen (15) days prior to the date of termination and shall give written notice of not less than seven (7) days of the time and place to tenant. In the event a decision on a grievance determines that good cause exists for terminating a lease, the LHA may thereupon file the summary process summons and complaint, and there shall be no review of the decision by the Board or the Department.

(9) Leases for Units Receiving Federal Section 8 Subsidy. In the event a tenant in a public housing unit receives federal Section 8 rental assistance the lease shall contain such additional provisions necessary or appropriate to satisfy the requirements of applicable federal statutes or regulations.

6.07: Pet Ownership in Elderly/Handicapped Housing

(1) LHA Pet Policy for Elderly/Handicapped Housing. Each LHA shall have a pet policy for its elderly/handicapped housing. The policy shall be consistent with and reflect the requirements in Chapter 151 of the Acts of 1989, these regulations, and the pet guidelines.

(2) LHA Approval of Pet Ownership in Elderly/Handicapped Housing. The LHA shall attach an application for pet ownership to every lease of a unit in elderly/handicapped housing. Each tenant (including a prospective tenant about to sign a lease) who seeks to keep a pet (other than caged birds, which are not unreasonably noisy, or fish in tanks) shall first ask for the LHA's approval of an application for pet ownership. If a tenant does not own a pet at the time, he or she may ask for conditional approval of an application, and the LHA may approve pet ownership by the tenant conditional upon his or her subsequent satisfaction of stated conditions. Upon approval of an application by the LHA, the tenant shall sign a pet rider to the lease. Following approval of an application by the LHA and prior to keeping the pet, the tenant shall post the requisite security deposit with the LHA.

(3) Application for Department Approval of Pet Ownership in Elderly/Handicapped Housing. In the event an LHA denies an application for pet ownership, it shall notify the tenant in writing of the reasons for denial and the tenant's right to appeal to the Department, and it shall specify the time for appeal and the documentation required to be submitted with the appeal. The tenant (including a prospective tenant about to sign a lease) may, within fourteen (14) days of receipt of the denial, appeal to the Department for permission to keep a pet. In seeking permission from the Department, the tenant or prospective tenant shall provide the following documentation (or an explanation why the documentation is not reasonably available):

(a) a copy of the completed application for pet ownership and the LHA's denial of the application;
(b) a color photo and identifying description of the proposed pet;
(c) the name, address and telephone number of a veterinarian and his or her statement of the current health, weight and age of the proposed pet;
(d) veterinary certificates of spaying or neutering and of all inoculations and testing required by the guidelines;
(e) a dog license if such a license is required by the municipality;
(f) the names, addresses and telephone numbers of two responsible persons, who are prepared to assume immediate responsibility for the care of the pet in an emergency; and
(g) a statement that the tenant is prepared to post a security deposit of one hundred sixty dollars or one month's rent (whichever is less).

(4) The Department's Decision. The Department shall review the documentation and any other relevant information and shall render a prompt written decision approving or disapproving the application. The Department shall require a security deposit to be posted with the LHA and may make other appropriate conditions in approving the application.

(5) The Pet Committee and the Pet Grievance Panel. The pet committee at an LHA shall accept and attempt to resolve any complaint made concerning a pet by any resident of elderly/handicapped c. 667 housing. If the pet committee fails to resolve a matter or if the pet owner or a complaining party is dissatisfied with the pet committee's resolution, a request for a hearing before the pet grievance panel may be made in accordance with the pet guidelines. Decisions of the pet grievance panel shall be binding.

A tenant's material failure to comply with a decision of the pet grievance panel shall be sufficient cause for termination of the tenant's lease and eviction. A tenant facing eviction as a result of his or her failure to comply with a pet grievance panel decision shall have no right to a grievance hearing prior to institution of eviction proceedings. If a pet grievance panel does not exist at an LHA, a tenant or a complaining party may file a grievance regarding a pet under the grievance procedure (see 760 CMR 6.08) in effect for the development in which the pet is kept.

6.08: Grievance Procedures

(1) Existing Procedures to Remain in Effect Until Amended or Replaced. Upon the effective date of this regulation, the grievance procedure then in effect at an LHA shall remain in effect and shall continue in effect unless and until the Department approves a new or amended grievance procedure. After the effective date hereof each LHA shall compare the provisions of its grievance procedure(s) with the provisions of 760 CMR 6.08(4) and shall initiate measures in order to achieve material compliance with those provisions.

(2) The Purpose of the Grievance Procedure. Each LHA shall have a grievance procedure, approved by the Department, of which the purpose shall be the prompt and reliable determination of grievances. An LHA's grievance procedure shall produce such prompt and reliable determinations of grievances. A grievance procedure, which in operation shall repeatedly fail to produce prompt and reliable determinations, shall be deemed deficient and shall be amended or replaced in the manner specified herein.

(3) Establishment, Replacement, or Amendment of a Grievance Procedure.

(a) Negotiation of Grievance Procedures. If no grievance procedure is in effect at an LHA or if an LHA or affected Local Tenants' Organization (LTO) believes that changes to or replacement of an existing grievance procedure are necessary or appropriate, proposals for establishment, replacement, or amendment of the grievance procedure may be made at any time by either the LHA or an affected Local Tenants' Organization (LTO). Establishment of a new grievance procedure or amendments to an existing grievance procedure shall be negotiated by the LHA and any affected LTOs and shall become effective upon the written approval of the Department.

(b) Approval of a Procedure Which Has Not Been Negotiated. In instances (i) where the operations of an existing grievance procedure have repeatedly failed to produce prompt and reliable determinations, (ii) where there is no operative grievance procedure and where the LHA and the LTO(s) have been unable to negotiate a new or amended grievance procedure, or (iii) where an LTO shall have failed to take necessary steps for the proper functioning of a grievance procedure (such as naming a panel member willing and able to serve), the LHA may request that the Department permit it to implement the three person panel grievance procedure set out in Appendix A. However, if it shall reasonably appear to the LHA that notwithstanding its own good faith efforts, a three person panel would likely not be promptly chosen if the Appendix A procedure were in effect, the LHA may request that the Department permit it to implement the grievance procedure set out in Appendix B which provides for a single hearing officer. As part of a request that the Department permit the LHA to implement one of these two unnegotiated grievance procedures, the LHA shall specify the reason(s) for its request and shall describe its prior unsuccessful negotiations with the affected LTO(s). The LHA shall also specify the reason(s) why it believes that further efforts to negotiate a procedure would likely be unsuccessful. The LHA shall provide the affected LTO(s) with a copy of its request permission to implement one of the two unnegotiated grievance procedures.

Following receipt of the request, the Department shall give the LTO(s) a reasonable opportunity to respond in writing. The Department may also discuss the request with the LHA and the LTO(s). If the Department shall determine: (i) that the operations of the existing grievance procedure have repeatedly failed to produce prompt and reliable determinations of grievances or that there is no operative grievance procedure, (ii) that the LHA is not primarily responsible for this deficiency, and (iii) that further negotiations between the LHA and the affected LTO(s) appear to be unlikely to produce an agreement on a new or amended grievance procedure, the Department may give permission to the LHA to implement the three person panel grievance procedure set out in Appendix A or, if it shall appear to the Department that a three person panel would likely not be promptly chosen notwithstanding good faith efforts by the LHA, the Department may give permission to the LHA to implement the grievance procedure set out in Appendix B, which provides for a single hearing officer.

(4) Requirements for Grievance Procedures. An LHA's grievance procedure shall provide for the following:

(a) Initiation of a Grievance. A grievance regarding whether good cause exists for terminating a lease shall be initiated by a tenant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of lease termination has been given to tenant by the LHA.

A grievance regarding whether participation in the MRVP or AHVP should be terminated shall be initiated by a program participant in writing and shall be mailed or delivered to the LHA at its main office within seven (7) days after a notice of program termination has been given to the program participant by the LHA.

A grievance regarding some other matter shall be initiated by a grievant in writing and shall be mailed or delivered to the LHA at its main office, or at a development office, if so specified, no more than fourteen (14) days after the date on which the grievant first became aware or should have become aware of the subject matter of the grievance, provided that the LHA shall have discretion to permit a grievance to be initiated late.

The LHA shall permit additional time for initiation of a grievance if the LHA shall find that there was a good reason for late initiation of the grievance and that the late initiation would not cause prejudice to the LHA.

(b) Informal Settlement Conference. Promptly after the initiation of a grievance, unless otherwise provided, the LHA's executive director or his or her designee shall give the grievant the opportunity to discuss the grievance informally in an attempt to settle the grievance without the necessity of a grievance hearing. The LHA shall give reasonable advance notice to the grievant and his or her representative (if any) of a time and place for an informal settlement conference, unless such a conference shall have taken place when the grievance was delivered to the LHA. If a matter is not resolved at the informal settlement conference, a grievance hearing shall be held. Failure to attend an informal settlement conference shall not affect a grievant's right to a grievance hearing.

(c) Hearing Date and Notice of Hearing. A grievance hearing regarding whether good cause exists for terminating a lease shall be scheduled within fourteen (14) days or as soon as reasonably practical after the date on which the LHA receives the grievance. A hearing of a grievance regarding some other issue, shall be scheduled as soon as reasonably convenient following receipt of the grievance.

The LHA shall give reasonable advance written notice of the time and place of the hearing to the grievant and to his or her representative (if any). The LHA, the hearing panel, or the hearing officer may reschedule a hearing by agreement or upon a showing by grievant or by the LHA that rescheduling is reasonably necessary.

(d) Pre-Hearing Examination of Relevant Documents. Prior to a grievance hearing the LHA shall give the grievant or his or her representative a reasonable opportunity to examine LHA documents which are directly relevant to the grievance. Following a timely request, the LHA shall provide copies of such documents to grievant and, for good cause (including financial hardship), may waive the charge for the copies.

(e) Persons Entitled to be Present. The grievance hearing shall be private unless the grievant requests that it be open to the public. If the grievant requests an open hearing, the hearing shall be open to the public unless the hearing panel or the hearing officer otherwise orders. The LHA and the grievant shall be entitled to specify a reasonable number of persons who may be present at a private hearing. A challenge to the presence of any such person shall be decided by the hearing panel or the hearing officer. At the hearing the

LHA and the grievant may be represented by a lawyer or by a non-lawyer. Each person present at the hearing shall conduct himself or herself in an orderly manner or he or she shall be excluded. If the grievant misbehaves at the hearing, the hearing panel or hearing officer may take other appropriate measures to deal with the misbehavior, including dismissing the grievance.

(f) Procedure at Grievance Hearings. The hearing panel or the hearing officer shall conduct the grievance hearing in a fair manner without undue delay. The hearing panel or the hearing officer shall initially take appropriate steps to define the issues. Thereafter, relevant information, including testimony of witnesses and written material, shall be received regarding such issues. Both the grievant and the LHA shall be entitled to question each other's witnesses. Procedure at the hearing shall be informal, and formal rules of evidence shall not apply. The hearing shall be tape-recorded. The members of the hearing panel or the hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and LHA rules and policies. The panel members or the hearing officer may request the LHA or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.

(g) Written Decision; Effect of Decision. Within fourteen(14) days following the hearing or as soon thereafter as reasonably possible the hearing panel or the hearing officer shall provide the LHA with a written decision on the grievance, describing the factual situation and ordering whatever relief, if any, that shall be appropriate under the circumstances and under applicable laws, regulations, rules and/or policies. The decision shall be based on the evidence at the grievance hearing and such additional information as may have been requested by the panel members or the hearing officer. The LHA shall forthwith mail or otherwise deliver a copy of the decision to the grievant and his or her representative. A copy of the decision (with names and personal identifiers deleted) shall thereafter be maintained at the LHA and shall be open to public inspection.

(h) Review by the LHA's Board. In cases where the decision concerns whether good cause exists for terminating a lease, there shall be no review by the LHA's Board. In other cases, in the event that the grievant or the LHA believes that (i) the decision of the hearing panel or hearing officer is not supported by the facts; (ii) the decision does not correctly apply applicable laws, regulations, rules and/or policies; or (iii) the subject matter is not grievable, within fourteen (14) days of mailing or other delivery of the decision, the grievant or the LHA may request review of the decision by the LHA's Board. The Board shall promptly decide whether to uphold, set aside or modify the decision after permitting the LHA and grievant to make oral presentations and submit documentation. The Board may also permit the hearing officer or hearing panel to make a presentation. The decision of the Board shall be in writing and shall explain its reasoning. If a written decision is not rendered within forty-five (45) days from the date a review is requested, the decision of the Board, when rendered, shall specify a reason showing that there has been no undue delay.

(i) Review by the Department. In the event that the LHA's Board shall make a material change in a decision of the hearing panel or hearing officer, upon written request of the grievant made within fourteen (14) days of mailing or other delivery of the decision, the Department shall review the decision of the Board and shall render a written decision upholding, setting aside or modifying the decision of the Board.

(j) Effect of a Decision on a Grievance. The decision on a grievance shall be binding between the LHA and the grievant with respect to the particular circumstances involved in the grievance, provided that if a court has jurisdiction to determine a matter which has been subject to decision on a grievance, the court's determination on the matter shall supersede the decision on the grievance. The fact that a person may have failed to grieve a matter shall not affect any such jurisdiction by a court. As between the LHA and any person who was not a grievant, the decision on a grievance shall have no binding effect.

6.09: Tenant Participation

(1) Purpose. Participation by tenants and household members through effective tenant organizations is beneficial to the administration of public housing. Cooperative working relationships enhance housing programs and benefit both LHAs and residents. The purpose of this subsection is to encourage the formation of representative organizations and to provide such organizations with the opportunity to be heard on and participate in matters affecting the interests of the residents.

(2) Recognition of Local Tenant Organizations and Revocation of Recognition.

(a) Recognition Where a Local Tenant Organization (LTO) Has Not Been Recognized. The LHA shall encourage and assist public housing tenants and adult household members (referred to in this subsection as the "residents") to form an LTO to represent the residents in dealing with the LHA on matters which affect the rights, status, duties, welfare, or other interests of tenants and their household members. An association of residents may submit a written request to the LHA to recognize the association as an LTO. A city-wide or town-wide LTO may also represent adult program participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA. In its request for recognition, an association shall demonstrate the following:

(i) Persons Represented. That the association is and will be representative of one of the following groups: all residents of state-aided public housing city-wide or town-wide; all residents in state-aided family housing; all residents in state-aided elderly/handicapped housing; or all residents in a particular state-aided development.

(ii) Participation by Residents. That the association does not and will not impose any unreasonable restriction on participation by any resident whom it represents.

(iii) Purpose of Representation. That the purpose of the association is and will be to provide representation for residents in matters which affect the rights, status, duties, or other common interests of tenants and their household members, and to seek and maintain a cooperative working relationship with the LHA.

(iv) Written Rules or By-Laws. That the association is and will be governed by written rules or by-laws which may be changed only by a majority vote of the residents present at a meeting for which there has been reasonable advance written notice (prominent posting at all involved developments may suffice) of time, date, and purpose.

(v) Meetings. That regular meetings are held and will be held at least twice per year at times and places which shall be reasonably convenient; that reasonable advance notice will be given of these meetings which are and will be open to attendance by residents; and that residents have and will have reasonable opportunity to make known their views on matters of common interest.

(vi) Officers. That the association's officers are and will be elected from residents whom the association represents.

(vii) Elections. That election of officers will be held on a regular basis not less than every three years pursuant to a fair election procedure which shall impose no unnecessary restrictions on candidates desiring to run for office and which shall entitle every represented resident to vote after reasonable notice of the time and place of the election; that each election shall be supervised by a disinterested person with experience in supervising elections who shall provide the LHA with a certificate attesting to the fairness of the election.

(viii) Special Elections. That a special election shall be held no more than once a year upon written request which specifies the reason for the special election and which is signed by one or more residents in twenty percent (20%) or more of the households represented.

The LHA shall grant an association recognition as an LTO if the association has adopted and implemented written rules or by-laws which set out the substance of all of the requirements in paragraphs (a)(i) - (a)(viii) and if there shall be no other LTO which is active (i.e., has held at least one meeting during the prior 12 months) and which has been previously recognized for the same group of residents, and if there shall be no other competing association seeking recognition as LTO for the same group of residents. A copy of the association's written rules or by-laws shall be submitted to the LHA with the association's request for recognition as an LTO and shall be available to the residents upon request.

(b) Recognition When There is More Than One Candidate for Recognition. An LHA shall not recognize more than one LTO to represent any of the following groups in state-aided public housing: residents city-wide or town-wide; residents in family housing; residents in elderly/handicapped housing; or residents in a particular development. The LHA shall recognize as an LTO a qualifying association which represents one of these groups so long as the group is not already represented by an LTO. An association shall not seek recognition as an LTO if the group of residents represented by the association is already represented by an active LTO.

If two or more qualified associations are candidates for recognition as LTO for the same group of residents, the LHA shall meet with the candidates and encourage them to agree on a single candidate. If the candidates cannot agree within a reasonable time, the LHA shall recognize the candidate which the LHA determines will best represent the residents. In making this determination the LHA shall consider all relevant circumstances, including the following:

(i) the reliably documented numbers of residents participating at the association's previous election(s).
(ii) the reliably documented numbers of residents attending the association's prior meeting(s).
(iii) the association's efforts to encourage participation by residents.
(iv) the ease with which residents participate in the association's activities, including the time and place of meetings, the effectiveness of notice procedures, the procedures governing participation at the meetings, and the inclusiveness of the nominating procedure.

The LHA shall mail its written decision which may recognize one of the candidates as LTO and which shall deny recognition of the other(s) with an explanation of its reasons, to each of the candidates.

(c) Department Review of the LHA's Decision on Recognition. If an association is dissatisfied with a decision of the LHA denying recognition of the association as an LTO, the association may, within thirty (30) days of the date that the LHA's decision was mailed to the association, request in writing that the Department review the LHA's decision to deny recognition and (if another association has been recognized) the LHA's decision to recognize that other association.

Upon review, the Department may uphold or set aside the LHA's decision denying recognition of an association as an LTO and the decision (if any) recognizing another association as LTO. The LHA and each association involved shall be entitled to submit written argument and documentation to the Department in support of their positions. The decision of the Department shall be in writing and shall explain the reasoning of the Department. The decision shall be mailed to the LHA and each association involved.

(d) Revocation of Recognition. An LHA may request that the Department revoke recognition of an LTO (i) in the event of the LTO's material failure to follow its rules or by-laws insofar as they are required in (a) above; (ii)

in the event of the LTO's material failure to follow the provisions of applicable law, including regulations of the Department; or (iii) in the event of the LTO's substantial misuse of funding, space or supplies provided by the LHA. Failure to hold regular meetings open to residents or failure to hold fair elections are examples of cause for revocation of recognition. Prior to requesting that the Department revoke recognition of an LTO, the LHA shall provide a written warning to the LTO that it is considering requesting revocation of recognition and shall specify the reason(s) in detail. The LHA may, if appropriate, include a description of measures which the LHA deems necessary for the LTO to take to cure the violation.

If the LHA requests that the Department revoke recognition of an LTO, its request shall be in writing and shall include a detailed specification of the reasons and a copy of its written warning to the LTO. A copy of the LHA's request shall be provided by the LHA to the LTO which shall have thirty days within which to file a written opposition to the request with the Department. If the LTO opposes the request, the Department shall determine the facts and, if the Department finds that there has been a material failure by the LTO to follow rules, by-laws, or applicable law, or a substantial misuse of funding, space or supplies without any good excuse, the Department may revoke recognition of the LTO or, if circumstances shall warrant a lesser sanction, may impose a lesser sanction which the Department deems to be appropriate. The decision of the Department shall be in writing and copies shall be provided to the LHA and LTO.

(e) Transitional Rule for Existing LTOs. The recognition of an LTO prior to the effective date of this regulation shall continue in full force and effect unless recognition is revoked as provided in (d) above. Any LTO existing on the effective date of this regulation shall adopt and follow written rules or by-laws setting out the substance of the requirements in (a) above within a reasonable time following the effective date of this regulation. Any change, which is not legally or practically possible, shall not be required provided that the LTO submits to the LHA written documentation showing that the change is not legally or practically possible.

(3) LTO Participation. The LHA and each LTO shall negotiate an agreement regarding resident participation. The agreement shall be responsive to and reflective of resident participation appropriate under local circumstances. The agreement shall be for a term of no more than seven years. The agreement may be renewed for additional term(s) if the LHA and LTO agree at the time of renewal. Where more than one LTO exists, the agreement shall be reflective of the consequences of multiple representation. The agreement and any renewal shall be subject to disapproval in whole or in part by the Department for good cause at any time; the Department shall communicate any such disapproval and specify the good cause in writing to the LHA and the affected LTO(s). Absent an agreement between the LHA and LTO approved by the Department regarding resident participation, the following terms for resident participation shall be in effect at an LHA:

(a) Meetings. The executive director of the LHA, or a designee with authority to speak for the LHA, shall schedule meetings regularly at convenient times and places with the LTO(s) separately or jointly. Such a meeting need not be public so long as a quorum of the LHA's Board is not present. At least ten (10) working days beforehand, the LHA shall notify each affected LTO of the date, time and place of the meeting. Either the LHA or an LTO may schedule an agenda item for the meeting by giving at least two days advance written notice to the other(s). If no agenda item is so scheduled, the meeting may be canceled by the LHA with advance notice to the LTO(s). Both the LHA and the LTO(s) shall attend the meeting if one or more agenda items have been scheduled.

(b) Availability and Copies of Documents. The LHA shall permit an LTO to inspect all written policies, procedures, rules, regulations, leases, and other forms in use at the LHA. Personal information, which is not public, shall not be made available. The LTO may request copies of documents subject to inspection, and the LHA shall

not charge for these copies so long as the LTO's request for copies shall be reasonable in number and shall not specify documents of which the LHA has recently provided copies to the LTO.

(c) LTO Funding by the LHA. Upon request the LHA shall fund all LTOs in a city or town at the annual rate of $3.00 per public housing unit occupied or available for occupancy by residents represented by such LTO(s) or an annual total of $250.00 for all such LTO(s), whichever is more; provided, however, that the LTO(s) and the LHA may agree to total funding not to exceed $6.00 per unit so occupied, if the LTO(s) shall have convinced the LHA of a need for additional funds.

If more than one LTO represents the same residents, the LTOs involved shall equally share the allocation of the funding attributable to these residents. The LHA shall disburse such funds to an LTO pursuant to an approved budget, which provides that funds will be used only for the LTO's ordinary and necessary business expenses and authorized activities (excluding social activities) with respect to state-aided housing programs. The LTO shall not make any expenditure of funds received from the LHA except in accordance with such a budget approved by the LHA which shall not withhold approval without good cause.

(d) Office Space. Upon request and upon a demonstration of particularized need, an LHA, without charge, shall provide an LTO which represents residents in state-aided public housing with a reasonable amount of space suitable for use as an office, which in the LHA's discretion may be shared, if suitable space at the LHA shall be available for such purposes or can reasonably be made available for such purposes without significant cost or inconvenience to the LHA so long as the space is used by the LTO solely for purposes of such representation and is maintained by the LTO in a clean and safe condition and so long as the LTO's need for the space continues and the space is not reasonably necessary for the LHA's other needs.

(e) Telephone Service for Large LTOs. If an LTO shall have made a documented demonstration of particularized need for local telephone service, upon presentation of the monthly statement, the LHA, without charge, shall reimburse an LTO, which represents residents in more than one hundred (100) state-aided public housing units, for the minimum cost of basic local telephone service so long as the telephone service has been used solely for local calls concerning representation of residents in state-aided public housing and for no other purpose and so long as the LTO's particularized need for local telephone service continues and is adequately documented when the LHA so requests.

(f) Meeting Space. Whenever possible, the LHA shall make community space or other appropriate space available for LTO meetings. The LHA and LTO shall cooperate in securing meeting space and in scheduling so that LTO meetings may be held at places and times convenient for the residents.

(g) Consultation Between LHA and LTO In Certain Matters. Whenever an LHA proposes to adopt or amend a rule or policy which will affect the rights, status, duties or welfare of residents or to request a waiver of regulatory requirements affecting such rights, status, duties or welfare, the LHA shall first seek the LTO's advice and include the proposal as an agenda item for discussion at a meeting between the LHA and LTO as provided in (a) above. The LTO shall also be given reasonable opportunity to appear and make known to the Board any objection to such a rule or policy at a board meeting. The Board shall deal with each such objection on its merits.

In the case of an application for modernization funds, the tenant participation requirements in 760 CMR 11.00 shall be followed by the LHA.

Prior to submitting a budget request to the Department the LHA shall first seek the LTO's advice and shall include the budget request as an agenda item for discussion at a meeting as provided in (a) above. The LTO

shall also be given a reasonable opportunity to appear and make known to the Board its concerns with such budget request at a board meeting.

(h) Review by the Department. Promptly after the Board's vote on a rule or policy, a request for waiver, or a budget request, for which approval by the Department is necessary, an LTO may communicate an objection or concern to the Department in writing, with a copy to the LHA, and the Department shall consider such objection or concern in determining its action on the matter.

(i) Posting of Rules and Regulations. The LHA shall post and shall keep posted in a conspicuous place in its central office and, if practical, in each development, all rules and policies of the LHA and the regulations of the Department which affect the rights, status, duties or welfare of tenants and their households. If postings are repeatedly removed, destroyed or defaced, the LHA shall take reasonable alternative measures to make the material conveniently available to tenants. Absence of a posting shall not affect the validity or applicability of rules, policies or regulations. Upon request, a tenant shall, without charge, be provided with one copy of an applicable rule, policy or regulation; the LHA may charge a reasonable fee for providing a duplicate copy or copies to the tenant.

(j) Preference for Tenants in LHA Hiring. The LHA shall notify all LTOs whenever a job at the LHA becomes available to outside candidates and is not covered by an applicable internal promotion policy. All such jobs shall also be posted in the LHA's central office. The fact that a candidate is a tenant or household member is a factor to be considered by the LHA in the candidate's favor. In the event that two or more candidates are otherwise equally qualified but one is a tenant or household member, that fact shall entitle the candidate to be considered more qualified than any otherwise equally qualified candidate who is not a tenant or a household member. This preference shall not apply if the effect of applying the preference would be to exacerbate a significant underrepresentation of minorities in the LHA's workforce.

(k) LTO Participation in Hiring. Prior to filling a position (including promotions pursuant to an applicable internal promotion policy) in which the employee to be hired will have direct dealings with the residents, the Executive Director (or the LHA where the employee to be hired is the Executive Director) shall afford each LTO the opportunity to examine resumes of all candidates, to express the LTO's view of the qualifications of some or all of the candidates (such expressions shall be objective), to recommend one or more of these candidates to be interviewed, to participate in interviews of the candidates who are interviewed, and to make a recommendation about which candidate should be hired. In the event that the Executive Director or the LHA shall choose to conduct a preliminary screening of the resumes of candidates, the LTO(s) shall not have the opportunity to examine resumes of candidates eliminated by such preliminary screening. Without a prior written agreement which details specific procedures to be followed, the LTO shall not check a candidate's references, either commercial or personal, contact his or her employers, past or present, independently arrange for an interview of a candidate, or conduct activities which infringe on the candidate's privacy.

(l) LHA Board Meetings. The LHA shall provide each LTO with reasonable prior notice of all regular and special board meetings and a copy of the agenda for each such meeting. The agenda for every meeting of the LHA shall provide a reasonable opportunity for the LTO(s) to be heard on agenda items so long as the agenda items directly bear on common rights, duties or interests of tenants and/or household members and not on grievable matters regarding individual tenants.

(4) Transitional Rule for LTO Participation. An existing agreement or arrangement for tenant participation in effect between an LHA and LTO at the effective date of this regulation shall remain in effect until amended or replaced by subsequent agreement between the LHA and LTO or until disapproved in whole or in part by the Department.

6.10: Waiver Provision

An LHA may submit to the Department for approval a request for waiver from the provisions set out in this regulation. The LHA shall consult with the LTO(s) prior to submitting any such request to the Department. With any request for waiver the LHA shall submit to the Department a detailed written statement setting out why the waiver is needed and the benefit(s) anticipated from the waiver. The LHA shall provide a copy of the request for waiver with any supporting documentation to the LTO in a matter affecting the rights, status, or duties of residents. Within thirty (30) days, any affected LTO may submit to the Department a detailed written statement why a requested waiver should be denied. The Department, in its discretion may approve a waiver if it determines that good cause exists for the waiver which will likely have significant benefit and will likely serve a public purpose.

REGULATORY AUTHORITY: 760 CMR 6.00: M.G.L. c.23B; c. 121B, §§29, and 32, St. 1989, c. 151

APPENDIX A

Grievance Procedure Provisions for a Three Member Hearing Panel.

(1) Choice of a Panel and Jurisdiction. This grievance procedure adopted by _____ Housing Authority (LHA) requires a hearing and determination of a matter subject to the procedure by a three member hearing panel. Under this procedure one member (and an alternate member to serve in the event of the member's unavailability for a hearing) shall be chosen by the LHA and one member (and such an alternate member) shall be chosen by the affected local tenant organization(s) (LTO(s)). The third member (and such an alternate member) shall be chosen by agreement of the other two members. Whenever a member (including an alternate member) is chosen, notice of the choice shall be given to the member and shall specify the term, not to exceed seven years, for which the member so chosen shall serve. A copy of the notice shall be given to the LHA (if the LTO made the choice) or to the LTO(s) (if the LHA made the choice). Each member so chosen shall mail or deliver his or her written acceptance to the LHA promptly after being chosen.

A hearing panel so chosen shall serve all residents of state-aided public housing represented by the LTO(s) in the city or town and all participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA, except for residents or participants who are subject to a different procedure.

Each member (including each alternate member) shall annually certify to the LHA that he or she is ready, willing and able to serve; failure so to certify within 10 days of receipt of a written request by the LHA shall render the member's position vacant. Upon a vacancy, however created, a new member shall be appointed in the same manner as the member, who created the vacancy, was appointed.

(2) Impartiality of Members. No member of a hearing panel to determine a particular matter shall have or shall appear to have any direct personal or financial interest in the outcome. No member of a hearing panel to determine a particular matter shall be related by blood or marriage to any party or to any person who is the source of evidence as to facts which are disputed by the parties. The member (including the alternate member) who is appointed by agreement of the other two members shall not be a board member of the LHA or an officer of an LTO. No member may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing.

Each member of the hearing panel shall determine any matter at issue impartially and objectively. Any panel member, who shall be or shall appear to be unable to determine any particular matter impartially or objectively on the basis of the evidence and applicable law, shall remove himself or herself as a member of the panel hearing the particular matter, or, if he or she fails to do so, shall be removed from the panel by the Presiding Member upon written objection by the LHA, any affected LTO, or the person who requested the hearing. Any member of a hearing panel who shall willfully obstruct prompt and reliable determination of any matter before the panel shall be removed from the panel for that hearing by the Presiding Member upon such an objection.

(3) Removal of a Member. A member (including an alternate member) may be permanently removed as a member at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias, or partiality. The LHA may remove the member which the LHA appointed and the LTO(s) may remove the member which the LTO(s) appointed, after notice to the member and the opportunity for him or her to be heard. The LHA and the LTO(s)

may jointly remove the member (or alternate) appointed by agreement of their appointees, after such notice and opportunity to be heard. If the LHA and LTO(s) fail to agree on removal of a member chosen by agreement of their appointees, the Department may remove that member for cause upon written request by either the LHA or an LTO. The written request shall contain a detailed specification of charges. The Department's decision whether to remove a member shall be in writing mailed to the member, the LHA and the affected LTO(s). Prior to removing a member for cause, the Department shall give the member, the LHA and all affected LTO(s) the opportunity to be heard.

(4) Designation of a Presiding Member. Following their appointment a majority of the members (including alternate members) shall designate in writing one member to be the Presiding Member, who shall preside at grievance hearings or shall designate some other member to do so if he or she shall be absent. A majority of the members may designate in writing a different Presiding Member at any time. Notice of the designation of a Presiding Member shall be given to the LHA and the LTO(s).

(5) Scheduling. The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices. The LHA shall consult each panel member and insofar as reasonably possible shall schedule hearings at times convenient for him or her or for his or her alternate.

(6) Quorum. Reasonable efforts shall be made to have a three member panel hear and decide each grievance. If a panel member without adequate notice to the LHA fails to appear on a scheduled hearing date, or, if a panel member and his or her alternate are both not available at any time reasonably convenient for the other panel members, two members shall constitute a quorum and may render a decision. If a panel member removes himself or herself or is removed after a grievance hearing has been held on a grievance, the remaining two members may render a decision on the grievance.

(7) Procedural Provisions. The provisions of 760 CMR 6.08 (4) are incorporated by reference into this grievance procedure. These provisions include: (a) the provisions regarding the time and method for initiating a grievance; (b) the provision for a pre-hearing informal settlement conference between grievant and the LHA about a grievance; (c) the provisions regarding the LHA's setting a hearing date and giving notice to grievant; (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing; (e) the provisions regarding who may be present at the grievance hearing; (f) the procedural requirements for the conduct of grievance hearings; and (g) the requirements regarding a written decision following the grievance hearing.

APPENDIX B

Grievance Procedure Provisions for a Single Hearing Officer

(1) Appointment of Hearing Officers and Jurisdiction. This grievance procedure adopted by _____ Housing Authority (LHA) requires a hearing and determination of a matter subject to the procedure by a single hearing officer. The hearing officer shall be appointed to serve for a term not to exceed seven years and shall serve all residents of state-aided public housing in the city or town and participants in the Massachusetts Rental Voucher Program (MRVP) and the Alternative Housing Voucher Program (AHVP) who hold vouchers administered by the LHA, except for those persons who are subject to an different grievance procedure.

Under this procedure the LHA shall from time to time nominate one or more persons to serve as hearing officer(s) to preside at and conduct hearings and to render prompt and reliable written determinations of matters at issue. The LHA shall submit its written nomination(s) for hearing officer(s) to each affected Local Tenant Organization (LTO). Each nomination shall include a resume of the nominee and the length of the term for which he or she is nominated. Within five days of receipt of a nomination any affected LTO may make a written request to the LHA to interview the nominee. Following such a request for an interview by an affected LTO, the LHA shall make prompt arrangements for an interview between the nominee and the LTO(s) which made the request. Within thirty days after the receipt of a nomination or within five days after its interview of a nominee, whichever is later, any affected LTO may approve or disapprove the nominee by giving written notice to the LHA. A notice of disapproval shall include the specific reason(s) why the LTO disapproved the nominee. If all affected LTO(s) shall approve a nominee or if no affected LTO shall disapprove a nominee within the requisite time, the nominee shall thereupon become a hearing officer upon written acceptance mailed or delivered to the LHA which shall notify the LTO(s).

Each hearing officer shall annually certify to the LHA that he or she is ready, willing and able to serve; failure to so certify within ten (10) days of receipt of a written request by the LHA shall render the hearing officer's position vacant.

(2) Impartiality of the Hearing Officer. A hearing officer or a member of his or her family shall not have and shall not appear to have any direct personal or financial interest in the outcome of any matter before him or her. No hearing officer shall be related by blood or marriage to any party or to any person who gives evidence as to facts which are disputed by the parties. No hearing officer may determine matters which directly concern his or her own housing or the housing of a family member or his or her own status or the status of a family member in that housing. Each hearing officer shall determine any matter at issue impartially and objectively on the basis of the evidence and applicable law. Any hearing officer, who shall be or shall appear to be unable to determine any matter impartially and objectively shall remove himself or herself as hearing officer, whether or not he has been requested to do so.

(3) Removal of the Hearing Officer. A hearing officer may be permanently removed from office at any time for inefficiency, neglect of duty, willful and material delay of proceedings, bias or partiality. The LHA and the affected LTO(s) may agree on removal after notice to the hearing officer and the opportunity for him or her to be heard. In the absence of agreement, the Department may remove a hearing officer for cause upon a request

by the LHA or the LTO. Prior to removing a hearing officer, the Department shall require a detailed written specification of the reason(s) for removal and, if it finds the specification to set out good and sufficient cause, shall give the hearing officer, the LHA and the LTO(s) the opportunity to be heard. The Department's decision whether to remove a hearing officer shall be in writing mailed to the hearing officer, the LHA, and the LTO(s). If a written specification fails to detail good and sufficient cause for removal, the Department shall deny a request for removal without a hearing.

(4) Appointments of Interim Hearing Officers. If there shall not be a hearing officer able and willing to serve for one or more pending matters and if use of the appointment process in section (1) of this grievance procedure would likely cause significant delay with potential adverse consequences to either the LHA or the grievant, the LHA with notice to the affected LTO(s) may request that an interim hearing officer be named by the Department. Such a request shall be in writing and shall specify the reason for the request. The affected LTO(s) shall be given a reasonable opportunity to comment on the request. If the Department finds there to be a reasonable need for an interim hearing officer, the Department shall name an interim hearing officer. The Department may name a previously disapproved nominee to serve as interim hearing officer if it finds that the LTO's stated reasons for disapproval did not constitute good and sufficient cause for disapproving the nominee.

An interim hearing officer shall have all the powers and duties of a hearing officer and shall serve in the pending matters for which he or she was appointed. An interim hearing officer may be nominated by an LHA to be hearing officer in the manner set out herein.

(5) Scheduling. The LHA shall be responsible for scheduling and other administrative matters, including all necessary notices.

(6) Procedural Provisions. The provisions of 760 CMR 6.08 (4) are incorporated by reference into this grievance procedure. These provisions include: (a) the provisions regarding the time and method for initiating a grievance; (b) the requirement of a pre-hearing informal settlement conference between grievant and the LHA about the grievance; (c) the provisions regarding the LHA's setting a hearing date and giving notice to grievant; (d) the grievant's right to inspect relevant documents and to secure copies before the grievance hearing; (e) the provisions regarding who may be present at the grievance hearing; (f) the procedural requirements for the conduct of grievance hearings; and (g) the requirements regarding a written decision following the grievance hearing.